ENCYCLOPAEDIC DICTIONARY OF THE DHARMAŚĀSTRA



VOLUME

2

SWAMI PARMESHWARANAND

The Encyclopaedic dictionary of the Dharmasatras is a thematic collection and compilation of all important aspects of the *Dharmasastras* which play very important role in development of Indian religio-philosophical and legal tradition. If there is one mass of scriptures that has inspired and sustained the Hindus over the millennia, it is the *Dharmasatras* which has created, strengthened and preserved our great tradition of spirituality. This it has done, not only by a fearless spirit of inquiry to its logical conclusions, but also by intuitive mystical experiences beyond the ken of the intellect. No school of thought, no religious movement of the subsequent periods in Indian history has remained untouched by their influence if not pervaded by them.

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Preface

The Enclyclopaedic Dictionary of *The Dharmasastras* is a compilation of comprehensive and informative source of informations about the 300 terms and terminology religious, social and political of Hindu codes of law and duty in three volumes. *Dharmasastra* (Treatises on law and duty) are the fundamental texts of the scriptural category of *smriti*, indeed for some (such as *Vijnaneshvara* and *Yajnavalkya-Smriti)* the only ones. The most prestigious and widely authoritative is that of the first man, Manu; but the genre is here represented by what is the next most prestigious, and perhaps more often actually followed authority, the *Yajnavalkya-Smriti* which covers rules about impurity, acceptable infringements of rules during times of emergency, and rules for forest ascetics *(vanaprastha)* (who still maintain sacrificial fires) and for renunciates who have internalised the fires *(yati* or *sannyasin).*

It seemed preferable to give large, unbroken, coherent units of text from the first and third sections of the less prestigious *Yajnavalkya-Smriti* than to attempt to anthologise the *Manusmriti*, the law book of Manu, in which the themes here represented are often more diffusely treated and scattered through the work.

I am thankful to all those scholars for their intellectual as well as moral support in compilation of this work.

K

KALIVARJYA

(Actions Forbidden in the Kali Age)

AMNOG ancient peoples the Golden Age has been in the past. India is no exception. Even in the *Ṛgveda* we come across a verse betraying the feeling that as time passes there will be progressively greater deterioration both moral and physical. In the famous dialogue of Yama and Yami. Yama is represented as saying "those later ages are yet to come when sisters would do what is not sister-like". (*Ṛgveda*.X. 10.10) But the *Ṛgveda* does not give any indication that the theory of four *yugas* had been evolved at that time. The word *yuga* occurs at least thirty-eight times in the *Ṛgveda*, but the meaning is rather doubtful. In a few places *yuga* means yoke (*ṚV. X. 60.8* and X.101.3 and 4). In many places it appears to refer to a very brief period, e.g., in *vaiśvānaraḥ kuśikebhir—yuge yuge' (ṚV.* IIII. 26.3), where Sāyaṇa renders *yuge yuge by pratidiman*. Generally *yuga* appears to mean in the *Ṛgveda* 'generation', e.g., *praminatimamṣyā yugāni* (lessening the life of human generations. ṚV. 1.92.11 and I.124.2). Vide also ṚV. I.103.4. II.2.2. III.33.8, V.52.4. In other places *yuga* must be given the sense of a 'long period of time', e.g., *tvām dūtam-agne amrtam yuge yuge dadhire (ṚV.* VI.15.8 'they made you. O Agni, an immortal messenger, carrying oblations in each period'), *devānām pūrvye yuge asataḥ asataḥ sadajāyata (ṚV.* X.72.2 'in the primeval period of the gods developed matter come out from the undeveloped one); *vide also ṚV.* VI.8.5, X.94.12, X.97.1. In *ṚV*. 1.158.6 *dirghatamā māmateyo jujurvān das'ame yuge* (Dirghatamas, the son of Mamatā, had grown old in the tenth *yuga), yuga* probably means a period of four years. Whatever be the meaning attached to the word *yuga*, the *Ṛgveda* does not contain the names of the four well-known ages.

The word *kṛta* seems to have been used in the sense of the best throw of dice or of the seeds of the *vibhātaka* tree in gambling in *ṚV*. X.34.6 'the seeds of *vibhātaka* bestwoing the Kṛta throws on the rival gambler that (increase) the gambler's desire (appetite) for gambling'. Kali is the name of the author of ṚV. VIII. 66 and in verse 15 of the hymn the composer says 'O descendants of Kali do not be afraid' (*kalayo mā bibhitana*). In *ṚV*. X.39.8

the Aśvins are said to have rejuvenated Kali who had become old. But there is no reference in the *Ṛgveda* to Kali as a throw in gambling or to Kali as the name of an age. The words *Kṛta, treatā, dvāpara* and *āskanda* (for Kali) occur in the *Taittiriya-Samhitā* (43.3)1. In the *Vājasaneya Saṁhitā* (30.18) also these very words occur. In the *Satapatha Brāhmaṇa (SBE,* Vol. 44, p. 416) also the same words are used to the *Kṛta* one who takes advantage of mistakes in the game; to the *treatā* one who plays on a regular plan; to the *dvāpara* one who plans to over-reach (his fellow-player); to the *āskanda* a post of the gaming room' (Eggeling's tr.). In the *TaiBrā* we read 'to the *kṛta* the master of the gaming hall, to the *tretā* one who takes advantage of mistakes, to the *dvāpara* one who sits outside, to the *Kali* (one who is like) a post of the gaming house (i.e., never leaves it).' Here Kali is substituted for the word *āskanda.* It is clear that in all these places *Kṛta* and the other three words are throws in gambling. *Kṛta* is the most lucky throw and *kali* is the most unlucky. The *TaiBrā* (1.5.11) says 'the four stomas *(viz., trivṛt, pañcadaśa, saptadaśa, ekavimśa)* are *kṛta* and the five are *kali,* therefore the *catus-ṣṭoma* (should be performed).

This shows that *Kṛta* meant either four or any multiple of four and *kali* a throw which when divided by four left one as remainder. When we come to the *Aitareya Brāhmaṇa* in the well-known story of Sunahśepa ('one lying down becomes *kali,* when about to leave the bed he becomes *dvāpara,* when rising he becomes *tretā* and he becomes *kṛta* when moving about') we find that the words *kṛta, tretā, dvāpara and kali* have come to be used in a figurative sense as representing either the *yugas* (periods of varying standards of morality) or at least progressively higher and higher stages of human activity. The *Satapatha Brāhmana,* V.4.4.6 identifies *kali* with *abhibhu¯* and appears to suggest that *kali* is a throw (*aya*). In the *Chāndogya Upaniṣad* also (IV.I.4) we read 'as (in a game of dice) all the lower castes belong to him who has conquered with the *kṛta* cast' and in the *Muṇḍaka Upanisad* (I.2.1) we are told 'this is the truth; the sacrificial works which they (the poets) saw in the hymns have been performed in many ways in the *tretā.*' Here the word *tretā* is explained even by Sankarācārya first as referring to the threefold priestly duties (*hautra, ādhvaryava and audgātra*) based on the three *Vedas* and alternatively as referring to the *tretā* age. There are thus grave doubts whether the theory of four ages called *kṛta, tretā, dvāpara* and *kali* was known to the ancient Vedic Literature.

The *Nirukta* (I.20) makes a distinction between sages of ancient times and those of later times the (ancient) sages had an intuitive perception of *dharma* and they imparted by instruction the (Vedic) *mantras* to later (sages) who had no intuitive perception of *dharma.* Apastamba declares that 'among sages of old are observed transgressions of the precepts of *śāstra* and also violent actions, but that on account of their distinguished spiritual greatness they incurred no sin and that if a person of these latter days were to look upon them as worthy of imitation and were to do those acts he would sink into sin'. The *Gautama-dharmasūtra* (I.2-4) expresses a similar view almost in the same words. Āpastamba further says that sages are not born among men of latter days on account of the transgressions of religious ordinances (rampant in later ages). But the ancient *dharmasūtras* do not exhibit the full-fledged theory of four *yugas* with their peculiar characteristics.

It is only in the *Viṣṇudharmasūtra*, the *Mahābhārata* (e.g. *Vanaparva*, 149 and 183). *Manusmṛti* (I.81-86), the *Purāṇas* (e.g. *Brahma*, chs 122-23. *Matsya* chs. 142-43. *Nāradiya, pūrvārdha*, ch. 41) that we have a complete theory of the four *yugas*, their characteristics and of the progressive religious, moral and physical decadence in them. It would be impossible to fix the period when this theory was first proclaimed. But it may be conjectured that it was perfected during the five or six centuries preceding Christ when the great schism due to the genius of Buddha spread over India. The evidence of inscriptions does not carry the antiquity of this theory far enough. Among the earliest is the Pikira grant of pallava Simhavarman where we have the words. 'Who was ever ready to extricate *dharma* that had become sunk owing to the evil effects of *kaliyuga*'.

This theory of four *yugas* provided a formidable weapon to writers on *dharma* when inconvenient texts had to be explained away. Many of our authorities have one verse in common viz. 'the religious ordinances are different in the *kṛta* age and in *tretā* and *dvāpara* also; in the *kali* age different ordinances apply to men in order to suit the decadence (of *dharma*) in each age.' Any practices that shocked the feelings of later writers were declared to be forbidden in the present age and were consigned to remote ages. Very amusing results follow from this. Parās'ara (I.24) claims that his *smṛti* contains the ordinances peculiar to the *kali* age. Parās'ara lessened the periods of impurity due to death or birth according as a man was learned in the *Vedas* or otherwise;15 he allowed a woman to remarry in case of five calamities viz. when the husband was missing or dead or had become an ascetic, was impotent or guilty of a *mahāpātaka*; he allows even brāhmaṇas to take cooked food from *dāsas*, cowherds, barbers &c. But it will be noticed from the extracts given later on that all these practices are condemned by later writers as forbidden in the kali age.

In many digests like the *Smṛticandrikā*, the works of Hemādri; the *Parāśaramādhaviya*, the *Udvāhatattva* of *Raghunandana*, the *Samayamayūkha* of Nilakaṇṭha long extracts are given from a few *Purāṇas* and from Saunaka which condemn certain practices as forbidden in the *kali* age (*kalivarjya*). It is an interesting question to find out when these verses about *kalivarjya* came to be composed.

Even Apastamba (II.6. 14.6-10) condemns the practice of giving all property to the eldest son as opposed to *śāstra*, but he does not use the work *kaliarjya*. Among the earliest references to practices once current but forbidden in the *kali* age is a passage of Bṛhaspati quoted by Aparārka (p.97 Anandāsrama edn.) where *niyoga* is said to be impossible owing to decadence (of *dharma*) in the several ages and where the several kinds of sons are declared as impossible in the present age. The *Prajāpatismṛti* refers to the ancient practice of offering flesh in *śrāddha* and prescribes that wine and all flesh are to be eschewed in *śrāddha* in the *kali* age. The *Laghu-Aśvalāyana-smṛti* (21.14.15) says that the two kinds of sons called Kuṇḍa and Golaka were permitted in other ages but are condemned in *kali*. It deserves to be noted the Viśvarūpa and Medhātithi do not quote a single verse about *kalivarjya*. Even Vijnānesvara quotes a single verse about *kjalivarjya* in which *niyoga*, the giving of a special share to the eldest son and the killing of a cow in sacrifice are condemned as not allowable in the present age. Even when almost all the *Purāṇas* wax very eloquent over moral and physical

decline in the *kali* age, most of them do not contair, any veses about *kalivarjya*. The *Nāradiya Mahāpurāṇa* contains four verses about *kalivarjya*. Aparārka quotes one verse and a half from the *Brahma Purāṇa* on practices forbidden in the *kali* age. viz. perpetual *brahmacarya* (student-hood), the taking of a *kamaṇḍalu*, marriage with a *sagotra* or *sapinda* girl, killing a cow, human sacrifice and *aśvamedha* (horse sacrifice). I was not able to trace these in the *Brahma Purāṇa* published by the Venkateshwar Press. The *Smṛticandrikā* quotes from the *Aditya Purāṇa* a verse saying that five actions should not be practised in *kali*, viz, the remarriage of a woman once married, the special share given to the eldest (on a partition), the killing of a cow, (intercourse) with the wife of one's brother and taking up of a *kamaṇḍalu*. Aparārka (p.233) quotes a verse from the *Mārkaṇḍeya Purāṇa* in which the view of Bhrgu that in the *kali* age no animal is to be offered in Madhuparka is mentioned. Aparārka (p.233) quotes two verses from a *Smṛti* without naming the author, one of which forbids in the *kali* age the killing of a cow in a sacrifice, the procreation of a son from the husband's brother (by *niyoga*), sacrificial sessions called *sattras*, the carrying of a *kamaṇḍalu*, the employment of wine (in the *sautrāmaṇi* sacrifice), and being a *samnyāsin* (of the Paramahamsa type), while the other forbids (the remarriage of) a girl whose marriage has not been consummated, human sacrifice, sacrifice of a cow, taking a *kamaṇḍalu* and *niyoga*. The *Smṛticandrikā*, the *Caturvargacintāmaṇi* of Hemādri, the *Parās'aramādhaviya*, the *Nirṇayasindhu*, the *Samayamayūkha* and other digests quote a very long passage from a *Purāṇa* (which most of them cite as *Aditya Purāṇa*) which enumerates the practices that were forbidden by the great sages at the beginning of the *kali* age after considering the reasons for and against them. That passage is set out in the appendix and a translation is given here with brief notes wherever necessary. The foregoing discussion shows that definite rules on *kalivarjya* began to be prescribed about the fourth century AD with Brhaspati and other older *smṛtikāras*, that the work called *Samgraha* (which is certainly earlier than the tenth century) contained such a list, that Viśvarūpa and Medhātithi (both of whom flourished between 800-925) do not quote verses on *kalivariya* and that from the twelfth century onwards (as the *Smṛticandrikā* and Hemadri show) long lists of *Kalivarjyas* come to be quoted in the digests on *dharma*. Therefore, the period during which *kalivarjya* practices figure in the *Purāṇas* and other works must be taken to be from about the fourth century AD to the eighth or ninth century AD. when Buddhism was vanquished and the Indian social fabric was being reconstructed.

The several *kalivarjyas* as mentioned in the passage of the *Āditya Purāṇa* will now be set out.

1. To appoint the husband's brother for procreating a son on a widow.

This refers to the practice of *niyoga*, which was allowed by Gautama (18.9-14). Nāada (*stripumsa*. verse 58). Yājnavalkya (I.68-69), though it was condemned by Manu (9.64-68), and Brhaspati.

2. The re-marriage of a (married) girl (whose marriage is not consummated) and of one (whose marriage was consummated) to another husband (after the death of the first). This referes to re-marriage of widows. Nārada (*stripumsa*, verses 98-100) allowed re-marriage of

even brāhmaṇa widows in certain calamities and Parāsara did the same (*vide* note 16), while Vasiṣṭha (17.74) and *Baudhāyana-dharmasūtra* (IV.1.18) allow the re-marriage of a girl whose first marriage was not consummated.

The passage is read *bālikākṣatayonyāśca* also: in that case it will mean only 'a married girl whose marriage has not been consummated' while the other reading refers to two kinds of widows (whose marriage is consummated and whose marriage is not so).

3. The marriage with girls of different *varṇa* among persons of the three twice-born classes.

4. The killing even in a straight fight of brāhmaṇas that have become desperadoes.

This is a subject which very much exercised the minds of writers on *dharma; Manu* (8.350-51), *Viṣṇu*, V.180-90. *Vasiṣṭha* (III. 15-18) permit the killing of an *ātatāyi*-brāhmaṇa, while Sumantu says 'there is no sin in killing an *ātatāyin*, except a brāhmaṇa and a cow', and so forbids the killing even of an *ātatāyi*-brāhmaṇa, *Vide Mitākṣarā* on *Yāj*. II.21 for a discussion on this.

5. The acceptance (for all ordinary intercourse such as eating with him) of a twice-born person who is in the habit of voyaging over the sea in a ship, even after he has undergone a *prāyaścitta*.

Baudhāyana-dharmasutra. I.1.20 mentions sea voyage as a practice peculiar to brāhmaṇas of northern India and condemns it, by placing it first among *pataniyas* (II.1.41). Some writers say that the prohibition applies to one who often crosses the sea as the compound *nau-yātuḥ* shows. Ausanasa says that *samudrage* is *patita* (p.525, of Jivananda).

6. The initiation for a *sattra*.

7. The taking a *kamaṇḍalu* (a jar for water).

Baudhāyana-dharmasūtra (I.3.4) prescribes among the observances of *snātakas* (thoses who have finished their study and have married or are about to marry) that they should carry a (earthen or wooden) pot filled with water; *Vasiṣṭha*, 12.14 and *Manu*, 4.36 and *Yāj*., I.132 also do the same. The *Madanapārijāta* (pp. 15-16) while quoting some of these verses says that *kamaṇḍalu-vidhāraṇa* refers to perpetual studenthood, but that is not correct, since in the *Nāradiya Purāṇa* quoted above (note 5. p. 6) the two are separately mentioned as forbidden.

8. Starting on the Great Journey.

This refers to the practice of starting towards the north-east in the case of those who had become forest-dwellers (*vide Manu*. VI. 31 and *Yāj*., III.55) and the practice of old men killing themselves by starting on the great journey till the body falls, by falling from a precipice or by entering the Ganges at a holy place like Prayāga or by entering fire. *Vide* Aparārka, p. 536 where the *smṛti* passages allowing this are quoted. Note that Sūdraka, the reputed author of the *Mrcchakatika*, is said to have entered fire and *vide Raghuvamśa*, 8.94; Atri, verses 218-19 which are quoted even by Medhātithi on *Manu*, V.88; *EI*, I, p. 140 and EI.

XIII.205 for instances of kings throwing themselves into the Ganges at Prayāga.

9. The killing of a cow in the sacrifice called *gomedha; vide Sānkhāyana-śrauta*, 14.15.1 *Kātyāyana-srauta*, XXII, 11.3-4 and *Manu*, XI.74.

10. The partaking of wine even in the *sautrāmani* sacrifice.

This is a sacrifice principally to Sutrāman (i.e. Indra) in which three cups of wine were offered to the Asvins. Sarasvati and Indra and a brāhmaṇa had to be hired for drinking the remmants of wine offered. Vide *Taittiriya Brāhmaṇa*. 1.8.6.2. *Sānkhāyana-śrauta*, 15.15.I-14 and Śabara on *Pūva-mimāmsasūtra*, III.5.14-15.

11-12 Licking the ladle (*surc*) after the *agnihotra homa* in order to take off the remains of the offerings and using the ladle in the *agnihotra* afterwards when it has been so licked. *Vide TaiBrā*. II.1.4 and *Satyāṣādhaśrauta* for this.

13. Entering into the stage of forest hermit as laid down in *śāstras* about it. *ApDhS*, II.9.21.18-II.9.23.2. *Manu*, VI.1-32, *Vasiṣṭha*, IX.1-11 contain elaborate rules about this stage.

14. Lessening the periods of impurity (due to death and birth) in accordance with the conduct the *Veda* learning of a man.

Vide Parāśara (note 3. p. 5) quoted above saying that a brāhmaṇa who is endowed with both Vedic learning and *agnihotra* has to observe *āśauca* (mourning) only for one day and he who is only learned has to observe it for three days. *Vide also* Bṛhaspati quoted by Haradatta on *Gautama*. 14.1. In *kali* a flat rule of ten days for all came to be prescribed. Viśvarūpa on *Yāj*. III.30 has an elaborate discussion on this text and ultimately gets rid of it by saying that it is only an *arthavāda* meant to praise the absence of greed and presence of excellent conduct. It is not quite unreasonable to infer that if Viśvarūpa had attached any value to or known these verses on *kalivarjya* he would not have failed to make use of the for exmplaining away Parāśara.•15. Prescribing death as the penance (*prāyas'citta*) for bra hmaṇas.•Manu (II.89 and 146) says that for wilfully killing a brāhmaṇa and drinking wine the *prāyas'citta* is death. *Gautama*, 21.7 says the same, following Manu.•16. Expiation (by s cretly performed *prāyas'cittas*) of the mortal sins other than theft (of gold) and the sin of contact (with those guilty of *mahāpātakas*).

Manu, XI.54 enumerates contact with those guilty of the four *mahāpātakas* as a fifth *mahāpātaka*. *Gautama*, 24 and *Vasiṣṭha*. 25 prescribe secret *prāyas'cittas* even for *mahāpātakas* like *brahmahatyā*. This rule says that there are no secret *prāyas'cittas in kali for brahmahatyā*, or drinking wine and for incest. Vide Aparārka. p. 1212 for rules as to who was entitled to secret *prāyaścittas*.

17. The act of offering with *mantras* animal flesh to the bridegroom, the guest, and the *pitṛs*.

Madhuparka was offered to honoured guests among whom the bridegroom was included. *Vide Gautama*. V.25-35. *Yāj*., I.1.09. The offering of flesh of various animals in *śrāddha* was supposed to conduce to the enjoyment of *pitṛs*. *Vide Yāj*., I.258-260, *Manu*. III.123. According to *Aśvalāyana Gṛhyasūtra*, I.24.26 *Madhuparka* could not be offered without flesh.

Vide Vasiṣṭha, IV. 5-6.

18. The acceptance as sons of those other than the *aurasa* (natural) and adopted sons.

Manu. 9.165-80, *Yāj*., II.128-32 and others speak of twelve kinds of sons.

19. Ordinary intercourse with those who incurred the sin of (having intercourse with) women of higher castes, even after they had undergone the *prāyas'citta* for such sin.

Gautama (IV.20 and 22-23) severely condemns the intercourse of men of lower castes with women of higher castes and holds that their progeny is *dharmahina*.

20. The abandonment of the wife of an elderly person (or of one who is entitled to respect) when she has had intercourse with one with whom it is severely condemned.

Vasiṣṭha, 21.10 says 'four kinds of women viz., one who has intercourse with a pupil or with the husband's teacher, or one who kills her husband or commits adultery with a man of degraded caste, should be abandoned'.

Yāj. (III. 296-97) is against and says that even such women should be kept near the house and given starving maintenance. *Vide* Atri. V.1-5.

21. Killing oneself for the sake of another.

The *smṛtis* say that a man should run the risk of life for cows and brāhmaṇas; *vide Manu*, XI.79 and *Viṣṇu*. III.45.

22. Giving up food left after one has partaken of it.

Vasiṣṭha, 14.20-21 says that food left after one has partaken of it from what was taken out for oneself or food touched by such leavings should not be eaten. Or this may mean 'given to another the leavings of food': some *smṛtis* permit giving *ucchiṣṭa* to sūdras and the like, which is forbidden here, *Vide Gautama*, X.61 and *Manu*, X.125.

23. Resolve to worship a particular idol for life (in return for payment). *Manu*, III.152 makes a brāhmaṇa performing worship for money unfit for invitation is *srāddha* and *devakrtya*.

24. Touching the bodies of persons who are in impurity due to death after the charred bones are collected.

Collection of charred bones took place on the fourth day after cremation. *Viṣṇu*, 19.10-12; *Vaikhānasa Smārtasūtra* V.7.; *Samvarta*, verses 38-39.

25. The actual slaughter by brāhmaṇas of the sacrificial animal.

26. Sale of the *soma* plant by brāhmaṇas. *Kātyāyana-Srauta*. (VII.6.2-4) says that *soma* should be purchased from a brāhmaṇa of the Kautsa *gotra* or a sūdra; but *Manu* X.88 forbids a brāhmaṇa the sale of *soma* along with many other things even though living by agriculture and the avocations of a vaiśya and *Manu* (III.158 and 170) condemns a brāhmaṇa who sells *soma* as unfit for being invited at a *śrāddha*.

27. Securing food even from a śūdra when a brāhmaṇa has had no food for six times of

meals (i.e., for three days).

Manu, XI.16 allows a brāhmaṇa who has had no food for three days to take food for one day from one whose actions are low and so does *Yāj.*, III.43. If we read hinakarmaṇā it would mean 'even by doing what is low' (i.e., by begging or theft or by such actions as are described in Nārada, *abhyupetyās'uśrūsā.* verses 5-7).

28. Permission to (a brāhmaṇa) householder to take cooked food from sūdras if they are his *dāsas*, cowherds. hereditary friends, persons cultivating his land on an agreement to pay part of the produce.

Many *smṛtis* allow a brāhmaṇa to have cooked food from śūdras if they are that brāhmaṇa's *dāsas*, barber, cowherd or cultivator of his land, hereditary friend. *Vide Gautama.* 17.6. *Manu*, IV.253, *Yāj.*, I.166 (where the first half is the same as here). *Angiras*, 120, *Parāśara*, XI (note 17).

29. Going on a very distant pilgrimage.

30. Behaviour of a pupil towards his teacher's wife as towards a teacher that is declared (in *smṛtis*)

Manu. II.210 prescribes that the wives of one's teacher, if they are of the same *varna* as the teacher are to be honoured like the teacher and if they are not of the same *varna* then by rising to receive them and by saluting them.

31. The maintenance by brāhmanas in adversity (by following unworthy avocations) and the mode of livelihood in which a brāhmaṇa does not care to accumulate for tomorrow.

Gautama, VII.1-7, *ApDhS*, 1.7.20.11-1.7.21.4, *Yāj.*, III.35-44 and others allow a brāhmaṇa to live by the occupations of a kṣatriya or vais'ya in adversity. *Manu*, IV.7 places before a brāhmana the ideal that he should not accumulate more corn than what is required for three days or for the current day. Both these extremes are forbidden here.

32. The acceptance of *aranis* (two wooden blocks for producing fire) by brāhmanas (in the *homa* at the time of *jātakarma*) in order that all the ceremonies for the child from *jātakarma* to his marriage may be performed therein. The *Samskāra-kaustubha* quotes a *gṛhyaparisiṣṭa* for this.

33. Constant journeys by brāhmaṇas.

34. Blowing of fire with the mouth (i.e., without employing a bamboo *dhamani*).

In *Manu*, IV. 53 also the same prohibition occurs. In Vedic passages blowing at the fire with breath from the mouth direct was allowed. *Vide* Haradatta on *ĀpDhS*. I.5.15.20.

35. Allowing women who have become polluted by rape. etc. to freely mix in the caste (when they have performed *prāyaścitta*) as declared in the śāstric texts.

Even so late a *smṛti* as Devala's (verse 47) allows a woman raped even by *mlecchas* to become pure after *prāyaścitta* for three days. The *Aditya Purāṇa* appears to be most harsh on innocent and unfortunate women.

36. Begging of food by a *sanmyāsin* from persons of all *varṇas* (including śūdra).

Baudhāyana-dharmasūtra, II.10 allows a *samnyāsin* to beg food from all *varṇas,* while *Manu* (VI. 43) and *Yāj.,* III.59 prescribe that he should beg in a village in the evening and Vasiṣṭha also (X.7) requires him to beg at seven houses not selected beforehand. But Vasiṣṭha says a little later on (X.24) that he should subsist on what he would get at the houses of brāhmaṇas.

37. To wait (i.e., not to use) for ten days water that has recently been dug in the ground.

38. Giving fee to the teacher as demanded by him (at the end of study) according to the rules laid down in the śāstra.

Yāj., I.51 prescribes that a student after finishing Vedic study and performing *vratas* should give fees to the teacher as the latter desires and should perform the ceremonial bath.

39. The employment of śūdras as cooks for brāhmaṇas and the rest.

The *Apastamba-dharmasūtra,* II.2.3.4 allowed śūdras to be cooks for the three higher *varṇas* under the supervision of *āryas.*

40. Suicide of old people by falling from a precipice or into fire.

Vide item no. 8 above.

41. Performing *ācamana* by respectable people in water that would remain even after a cow has drunk it to its heart's content.

Vasiṣṭha, III.35 says that water accumulated in a hole on the ground would be fit for *ācamana* if it is as much as would quench the thirst of a cow. *Vide Manu.* V.128 and *Yāj., I.192.*

42. Fining witnesses who depose to a dispute between father and son.

Yāj., II.239 prescribes a fine of three *paṇas* for witnesses in disputes between father and son.

43. *Samnyāam* should stay where he happens to be in the evening.

This may also mean 'a *samnyāsin* should beg at the houses in the evening'.

Manu, VI.55-56 and *Yāj.,* I.59 prescribe for *yati* begging in the evening.

These are the *kalivarjyas* set out in the *Āditya Purāṇa.*

Besides these, the passages quoted above also mention the following as *kalivarjya.*

Govadha—A cow was killed in *madhuparka* (*Mānavagṛhya,* I.9.19), in the *aṣṭakā śrāddha* (*Hiranyakes'i-gṛhya.* II.15.1) and a barren cow was sacrificed for Mitra and Varuṇa *SBE,* Vol. 26, pp. 387-91).

Uddhāravibhāga—giving a larger share to the eldest brother on a partition. *Vide Manu.* 9.112 and 117.

Purṣamedha—*Vide S'ataBrā,* 13th *kāṇḍa, adhyāya* 6; *Sānkhāyana-Srauta-sūtra.* 16.10-14.

Aśvamedha—Vide SataBrā. 13th *kāṇḍa, adhyāyas* 1-4 for it.

Brahmacarya for a very long time or peretual studenthood.

Parāśara, II.5. Bhāradvājagrhya. 1.9. *Baudhāyana-dharmasūtra*, I.2.1 prescribed *brahmacarya* for 48 years. *Vide* Sabara on Jaimini. I.3.3 who shows how Baudhāyana is opposed to Vedic injunctions (quoted in *History of Dharmaśāstra*, p. 26, n. 73).

Madya—Wine was forbidden to brāhmanas at all times and in all stages (*Gautama*, II.25). There was divergence about kṣatriyas and vaiśyas. Many authorities agreed that wine from flour was forbidden to kṣatriya and vaiśya householders, but not that which was prepared from raw sugar and honey. *Vide Mitākṣarā* on *Yāj.*, III. 253.

KĀMASĀSTRA

This does not, however, mean that he has not consulted the Kāmaśāstra of Vātsyāyana. Incidentally in his History of Dharma-Sāstra, Vol II, part I, he has referred to the Kāmaśāstra aspects in the course of his discussion; but his treatment to the topic as such can not be regarded as thorough as is generally expected to be. In fact, he has given a very meagre treatment to the third goal of human life in History of Dharma-Sāstra. Hence the present author thinks it proper to do some justice to this subject, in the light of the Dharma-Sāstra works—commentaries on the Smṛtis, Dharma-Sūtras and digest works and also the Kāmasūtra of Vātsyana with the commentary of Yaśodhara. Incidentally, however, an attempt is also made here to compare the material presented here with that of the Gṛhyasūtra literature. The following is an attempt in this direction.

The most significant aspect of the commentary of Yaśodhara on the Kāmasūtra is that he takes every chance to quote the Dharma-sāstra texts—particularly the Smṛti works and the Dharma-Sūtra works to explain the text of the Kāma-sūtra perhaps in the best possible manner. One may refer to the important places of his commentary in the foot-note. Here also it must be stated that the Kāmasūtra repeats the traditions that Brahma composed a work in one hudred thousand chapters on Dharma, Artha and Kāma and that Bṛhaspati dealt with a portion of that work i.e. on Artha, as already noted by MM. Dr. P.V. Kane, in his History of Dharma-Sāstra, Vol. I, Part I, p. 288. On page 192 of the same volume, Dr. Kane notes the view point of Dr. Jolly that the Kāmasūtra is deeply influenced by the Arthaśāstra. In this very context, it must be observed that the writers on Dharma-Sāstra hardly quote the Kāmasūtra or even the view point of its commentator.

The importance of the Kāmasūtra work and its commentary Jayamangalā is also to be emphasised from an altogether different angle. In the selection of a bride, the Yājnavalkya-Smṛti I. 53, makes a reference to the expression 'Yaviyasim'. This expression is almost left unexplained by the commentators of the Yājnavalkya and even the commentators of the Manu-Smṛti do not render any adequate help to realise the significance of this expression. Here, however, it should be stated that Vijnāneśvara in his Mitāksarā on the Yājnavalkya-Smṛti I.52 categorically states that she should be younger to him by age and size. This explanation from the pen of the well-known commentator is certainly not every

enlightening. Here one may note the view point of the Kāmasūtra III.1.2 that the girl should be younger by three years. One is tempted to remark here that no special cognisance of this view appears to have been taken by the writers on Dharma-Śāstra. Hence the importance of this view can hardly be gainsaid, even assuming that perhaps this view may not become acceptable to the modern society.

On a closer study of Dharma-Śāstra and Kāmaśāstra, a comparative student is bound to be impressed by the glaring similarity of views expressed by the writers of both the goals of human life. Hence it is necessary to draw the attention of the readers to such important places.

The Kāmasūtra II.5.14 significantly observes that the marriage ceremony is said to be complete when it is performed in the presence of fire. The theory of Dharma-Śāstra writers is that marriage when completed by Homa and Saptapadi is indissoluble though the modern legislature does not favour this view. Even the Manu-Smrti IX. 10 says that 'let mutual fidelity (between husband and wife) continue till death; this in brief may be understood to be the highest dharma of man and wife.'

The Kāmasūtra II.6.35 specifically prohibits any enjoyment in water. This view point of the author of the third goal of human life is further supported by the commentator Yaśodhara by quoting the texts of Gautama Dharmasūtra and Bhārgava. Even the Gautama Dharmasūtra 13-19 favours this view. Here one is tempted to remark that in the quoted text from the Gautama Dharma-sūtra 13-19 in the commentary of Yaśodhara on the Kāmasūtra II.6.30, the expression 'naraka' is present, though it is not introduced in the original text of the Gautama Dharmasūtra. The commentator Maskari, however, in his comments takes the word 'naraka' from the Gautama Dharmasūtra 13.18 to explain the text. One is surprised to note that the statement of Bhargava quoted by the commentator on the Kāmasūtra clearly indicates that one should undergo the expiation known as Kṛcchra cāndrāyaṇa for having taken enjoyment with a lady even in the water. Here one is constrained to observe that whatever descriptions of water sports and enjoyments become available to the readers from the Mahākāvyas have no sanction from the Dharma-Śāstra authorities. In this very context, it must be added that Maskari, the regular commentator of the Gautama Dharmasūtra has not quoted the text of Bhārgava to prescribe the expiation for violating the rule laid down in the Dharma-Śāstra. Hence the importance of the commentator on the Kāmasūtra to understand the Dharmasūtra text can hardly be denied by any serious student of the subject proper and particularly a comparative student of the subject.

The Kāmasūtra II.9.26 does not give any permission10 for mukhamaithuna. Yaśodhara supports this view point by quoting Vasiṣtha in favour. It may be noted here that this is found in the Vasistha Dharmasūtra.

The Kāmasutra II.1.13 specifically prohibits a man from selecting a lady having terrible name as his wife. Here one is tempted to observe that this enture sūtra gives us a very comprehensive view of this matter. Here the concentration is made on the physical appearance of a lady in addition to other important traits. By the side of this discussion

attention may be drawn to the present author's paper on 'Relation of the Gṛhya Sūtras to the Dharma-Sāstra literature 'indicating the stress given by the Gṛhyasūtra writers to the internal aspects in this matter. Incidentally, however, it must be observed here that the ex lanation of the commentator Yaśodhara on this protion of the Kāmasūtra is more lucid and deserv s more attention on all hands. In passing, one may also add here that in explaining the inausp cious names of a lady, the names selected by him appear to be totally different from the names of such ladies as given by the commentators of the Manu-Smṛti III.9. Hence in the matter of givin exposition to the topic proper under consideration, our commentator Yaśodhara certainly deser es credit particularly against the background of the Dharma-śāstra authors. The importance of this protion of the Kāmasūtra and his commentator Yaśodhara has also escaped the notice of MM. Dr. P.V. Kane in his History of Dharma Sāstra.•There is also an agreement on the point t at a woman is supposed to be pure at the time of enjoyment. The Kāmasūtra II.9.33 holds this view. It is further interesting to note the observation of the commentator Yaśodhara on thi portion of the Kāmasūtra. From this, it is evident that he has not quoted any smṛti authority for this view of the Kāmasūtra. This further shows that he has asked his readers t find out an authority for the same. This requirement can be fulfilled by drawing the atten ion of the readers to the commentary of Mitramiśra on the Yājnavalkya. Here it must be state that Mitramiśra has quoted a stanza from the Yama-Smṛti to support the observation that w men are pure at the time of enjoyment. From this, it would be fair to draw the legitimate in erence that the commentary of Mitramis'ra is complementary to the commentary of Yas'odhara on t e point of supplying a necessary quotation fr

m the Smṛti literature.•There is also a conceptual agreement between the Kāmaśā tra and Dharma-Sāstra on the point that some ladies are not approachable for any sexual interc urse. Here for this purpose, one may refer to the Kāmasūtra I.5.29.31 and the commentary of Yas'odhara on the same. By the side of this one may also refer the smṛti to indicating the ladi s unapproachable and particularly quoted in the Prāyścitta Mayūkha by Nilakaṇṭha. If, however, one compares the lists provided by both the Kāmasūtra and even the Yājnavalkya-Smṛti III.231-232, one will form the opinion that both the lists are complementary to each other. The Dharma-Sāstra list indicates the highest respect for some members of the family and also the high moral sense. While the Kāmasūtra list reveals that in life hygienic approach is also equally important and advises men not to approach ladies who are suffering from any venereal disease of a communicable form. It thus takes into consideration the health of a person. This list also indicates that one should not be treacherous towards one's own friend and Dharma and even towards a learned Vedic brahmin. In this very context, it would be interesting to note that Yaśodhara quotes a passage from the Smṛti without disclosing the source. However, attention of the readers may also be drawn to the Kāmasūtra referring to the view point of the followers of Bābhravya and the revered teacher Goṇikāputra. For this immoral behaviour, the Dharma-Sāstra lays down corporeal punishment and also the expiation. But in the Kāmasutra, no such punishment is laid down for this immoral behaviour.

As regards the behaviour of a married couple, immediately after marriage, the Kāmasutra III.2.1 points out that they should observe celibacy for three days (actually

three nights) and lie down on the ground. This thought comes very near to the thought that is expressed in the Vasiṣtha Dharmasutra IV.14 quoted on the Yājnavalkya Smṛti III.16 by Vijnāneśvara in his Mitākṣarā. But this view is expressed in respect of the impurity, the married couple should follow a particular behaviour. However, in the vast range of Dharma-śāstra, it is not very difficult to trace such a view in any of the smṛti works.

The topic of anumaraṇa is also referred to in the Kāmasutra22 VI.3.53. But one would certainly find a very detailed discussion even from the Mimāmsā angle particularly in the commentary of Vijnānes'vara on the Yājnavalkya-Smṛti I.86. It is rather surprising that Yas'odhara, the commentator of the Kāmasutra, though good at the knowledge of Pūrva-Miṃāmsā, has not made any discussion on this particular place of the Kāmasūtra from the Mimāmsā angle. In the Kāmasūtra, however, we find only a passing reference to the aspect of anumaraṇa.

As regards the proper time when one should approach one's wife for sexual intercourse, the Kāmasutra24 I.2.20 expresses the view which comes in complete agreement with the view point of the writers on Dharma-Sāstra. In the Mitākṣarā on the Yajnavalkya-Smṛti I.81, one finds that Vijnāneśvara has made a very lengthy discussion on this aspect by introducing several views and also the Mimāmsā technical terms like Vidhi, parisamkhyā etc., which however, has no place in the commentary of Yaśodhara.

The importance of an aurase son from a marriage with a lady of the same caste forms another topic of common discussion of both the branches of learning. Yaśodhara in his comments on the Kāmasutra I.5.1 quotes smṛti texts to support the above idea. It must be remembered here that in the later Dharma-Sāstra, we come across independent treatises on Adoption and even lengthy discussions in the commentaries on the Smṛti works and digest works. But the commentator Yaśodhara does not seem to have referred to any such discussion.

There is also conceptual disagreement between the Kāmas'āstra and Dharma-Sāstra. A few cases may be mentioned here.

(1) The Kāmasūtra III.5.29-30 refers to all the eight forms of marriage but recommends only the Gāndharva form of marriage. While the Dharma-Sāstra works discuss all the eight forms of marriage and show their choice in prescribing only some forms of marriages to the particular castes. Thus, in the prescription of these forms, casteism seems to be the basis at the back of the mind of the Dharma-Sāstra authors. Here for further discussion attention may be drawn to the discussion in the History of Dharma-Sātra.

(2) As regards the goals of human life, however, needless to say that the Kāmasutra is more concerned with the third goal of human life; while the Dharma-Sāstra authors appear to lay stress only on the first goal of human life. Incidentally, however, the emphasis is also laid on the fourth goal of human life.

Dr. Kane has also noted this important conceptual disagreement between the two types of writers on Dharma-Sāstra and Kāmaśāstra.

The Kāmaśāstra I.2.21 does not appear to lay down any importance to the activities,

concerned with future of a person. The Dharma-Sāstra authors, on the other hand, look to the future of a person and the society both conceptually. Here it should be remembered that the Kāmasūtra author is more concerned with the individual benefit concerned with the activities of present tense; while the Dharma-Sāstra autors are more concerned with both individualist and socialistic welfare. In this very context, it should be noted that the expression 'socialistic' is not used in the modern sense.

It should be interesting to see the attitude of both the thinkers in respect of a conflicting position.

When however, any conflicting position arises in the views of different thinkers of the Kāmaśāstra or the social custom in respect of a particular thing, it is evident from the Kāmasutra that the conflicting situation is to be avoided on the basis of one's own mental inclination and also the situation prevalent in a particular countary. For the clarification of the idea in this point, the readers are referred to the discussion on the Kāmasutras II.9.30 and II.9.34. In the Dharma-Sāstra literature, however, whenever any conflicting situation arises in respect of any item, the conflict is resolved either by the help of option based on the sweet will of a person concerned or on the strength of the Vyavasthita Vikalpa based on the customs and manners prevalent in a family or a country or the Gṛhya Sūtra traditions particularly maintained by the members of the family.

When however, any conflicting situation arises as for example between Dharma-Sāstra texts and Indian medical science (i.e. Ayurveda), the position of the Dharma-Sāstra texts prevails over the texts of the Ayurveda. For the clarification of this point, attention may be drawn to the discussion in the Vyavahāra-Mayūkha in respect of the seniority of the twins. When, however, any conflict arises between the Kāmaśāstra and the Dharma-Sāstra, Vātsyāyana appears to be more considerate and attaches importance to the customs and manners in respect of enjoyment and particularly prevalent in the particular countries. He is not bold enough to set aside the smṛti authority.

When however, in the Dharma-Sāstra texts, one comes across conflicting texts, the writers on Dharma-Sāstra resort to the Mimāmsā rules of interpretation for removing the conflict and also for assigning the scope to the different texts. On this point, however, it should be happily noted that the commentator Yas'odhara has also employed Mimāmsā doctrines to interpret the text and also to resolve the conflict. Such places may be noted in the foot-notes.

Indentedness of Kāma-Sāstra to the Dharma-Sāstra also will from a part of this discussion. Here it is pertinent to note that the Kāmasūtra author Vātsyāyana has followed verbatim the expressions and language thoughts in respect of Savarṇa marriage, Anuloma marriage, Pratiloma marriage, anumaraṇa etc. It has laid emplasis on the marriage between the partners of one and the same caste. That such marriages of persons of equal castes tend to be happy marriage appears to be the view point of the author of the Kāmaśāstra. In addition to this, the expressions 'dharmajnasmaya, ṛtau upeyāt, prattāsu bhaginiṣu ca etc. and svakṣetre samskṛtāyām tu' etc. and references to the expiation in case of the violation of any rule laid down in the Dharma-Sāstra and particularly followed in the Kāmaśāstra,

clearly bear testimony to the indebtedness of Kāmaśāstra to the Dharma-Sāstra. It would be further worthy of notice that the Kāmasūtra I. 3.1 considers the study of Dharma-Sāstra as aboslutely essential. Incidentally, however, one has to note the sense of respect evinced by the author of the third goal of human life towards the Dharma Sāstra thoughts, views and expressions, without which perhaps the study of the Kāmaśāstra can not be said to be complete. Even a casual reader of the Kāmasūtra and the Jayamangalā is sure to be impressed by the hard fact that the influence of the Dharma-Sāstra expressions and thoughts on the Kāmaśāstra is almost undeniable.

The importance of the use of the Mimāsā principles of interpretation also forms a common feature of the writers of the Kamaśāstra and Dharma-Sāstra. Here a reference could be made to the Mimāmsā doctrines—Anuṣanga, Punarvacana, Niyama, Upalanṣaṇa, Sandamśa, Sāmānya-Vidhi, Atideśa, Vikapla, Samuccaya, Bādha, Niṣedha, Vidhi, Holākādhikaraṇa, and the Mimāṁsā maxim 'paramattama-pratiṣiddhaṁ anumatam bhavati/employed by Yaśodhara in his commentary Jayamaṅgalā on the Kāmasutra. Incidentally, however, it should be noted that in the Dharma-Sāstra there is ample scope for utilising the Mimāṁsā doctrines particularly on account of the conflicting situations and texts available in the different parts of the country. Comparatively, the scope of the Mimāṁsā doctrines in the Kāmaśāstra appears to be very limited. However, one is happy to mention the view that Yaśodhara has not neglected the importance of this branch of learning in interpreting and explaining the text of the Kāmaśāstra.

A good student of Dharma-Sāstra and Pūrva-mimāṃsā will be inclined to consult some important place of the Kāmasūtra in the light of the commentary Jayamaṅgalā, where in particular the Dharma-Sāstra element is responsibly invlolved, to see the novelty of the commentator from the Mimāṁsā angle. On a closer and minute study of such places, one is tempted to express the view that the commentator Yaśodhara has disappointed his interested readers.

It would be equally interesting to see whether the Kāma-Sāstra has indeed made any improvement over the positions that are generally accepted by the authors of the Dharma-Sāstra literature.

Whatever matter is added by the author of the Kāmasutra in the matter of selecting a girl as a life-long partner of one's is indeed an improvement upon the Dharma Sāstra material that is available to us in the vast range of Dharma-Sāstra literature. This point it already discussed above in the course of the comments on this aspect.

The Dharma-Sāstra authors remain contented only by pointing that the ladies who prove to be immoral (even after the death of the husband) should be provided with garment and food only and they should not be given any share in the ancestral property. In order that a lady should have a share in the property of her deceased husband, it is necessary that she should lead a very moral and pious life. It is also important to draw the attention of the interested readers to the discussion made by the present author in respect of the manuscript discussing a conflict between a mother-in-law and daughter-in-law in the matter of succession to the property of a person. In this very context, one would certainly appreciate

the role of the Kāmasutra author who specifically points out the conditions which are responsible in case of ladies for leading an immoral life and also the reasons why they are attached to other people other than the husband. Such a type of discussion on the social aspect, however, has no scope in the vast range of Dharma-Sāstra literature. Hence this could be treated as a significant contribution of the Kāmasutra to the studies of Dharma-Sāstra literature.

As regards the education to be taken by the ladies, it must be stated that the author of the Kāmasūtra holds that the ladies should study the Kāmasūtra along with its subsidiary—angas making inclusion of 64 kalas such as singing, dancing, music etc. either before marriage or even after marriage but with the consent of the husband. Even in classical Sanskrit literature, one comes across references to these arts and particularly Kāmasūtra as is the case with the literature of Bhavabhūti. The salient features of the educational system outlined in the Dharma-Sāstra works are the high and honourable position assigned to the teacher, close personal contact of the pupil with the teacher and individual attention, the pupil's stay with the teacher as a member of his family, oral instruction and the absence of books, stern discipline and control of emotion and the will, cheapness of fees. For a fuller treatment in this respect, attention of the reders is drawn to the lengthy discussion made by MM. Dr. P. V. Kane in his 'History of Dharma-Sāstra', Vol. II, part I. But here it must be stated that the main aim of education is to build up the moral character of a person who alone would act as a responsible member of the society by curbing his emotions in the best possible manner. It seems that this does not appear to be the attitude of the author of the Kāmasūtra. Hence, one will have to express the view that in the matter of education, both the Kāmasūtra author and the Dharma-Sāstra authors have an altogether different outlook and also the different subjects for instructions. Hence it can not be said that the Kāma-śāstra has made any good improvement over Dharma-Sāstra, but in the matter of laying down instructions in the 64 arts otherwise known as fine Arts (in modern terminology), one has to accept the improvement and progress on the part of the Kāmasūtra author.

It would be important to mark the difference in meaning with reference to the terms like Avaruddhā, Punarbhu, occurring in the Kāmaśāstra and Dharma-Sāstra. This would be done only in the footnotes, so as to avoid further discussion in this lengthy chapter.

In conclusion, one will have to appreciate the important aspects of the common places of agreement between the authors of the two goals of human life, their disagreement on certain points, the improvement of one over the other in certain respects, their attitude in respect of the conflicting situations, their employment of the doctrines of Purva-Mimāmsā in the matter of interpretation and resolving conflicts, the respect of the authors of the Kāmaśāstra for the Dharma-Sāstra authors, their views, their outlook, the close and complementary character of both these branches—their indebtedness to each other—ultimately resulting in the solidarity of the social functions can hardly be ignored by any comparative student of both these goals of human life.

KING BHOJA AND HIS WORKS ON DHARMASĀSTRA AND ASTROLOGY

Numerous works on different branches of Sanskrit literature are ascribed to Bhojadeva such as on Poetics (viz., *Sarasvatī-kaṇṭhābharaṇa* and *Śṛṅgāraprakāśa*), on Grammar (*Sarasvatikaṇṭhā-bharaṇa)*, on *silpa*, painting and architecture (*Samarāṅgaṇasūtradhāra* edited by Ganapati Sastri in the *GOS*), a commentary on *Yogasūtra* (*Rājamārtaṇḍa*). *Tattvaprakāśa* (on Saivāgama published in the *TSS*), a work on Astronomy called *Rājamṛgāṅka* composed about AD 1042-43. and *Yuktikalpataru* on *Rājaniti* edited by Dr. N.N. Law (Calcutta, 1917). That he composed some extensive work on Law and Administration of justice follows from the numerous references to him in the *Mitākṣarā*, *Smrticandrikā* and other works (*vide History of Dharmaśāstra*, Vol. I, pp. 276-78). Recently in the critical edition of the *Sāntiparvan* published by the Bhandarkar Oriental Insititute (ch. 121.14-15), the commentary *Durghaṭārthaprakāśika* cites the lengthy explanation of the one and a half verses beginning with *yatra śyāmo lohitākṣaḥ* given by the Vyav*āharamanjari* of Bhojadeva. From this we come to know that at least one work called *Vyavahāramanjari* composed or compiled by Dhāreśvara Bhojadeva existed long ago.

In the present paper I propose to deal with several works of Bhojadeva concerned with astrological matters in relation to topics of *Dharmaśāstra*. The earliest work of this type ascribed to Bhoja is the one called *Bhimaparākrama*. This work is thrice mentioned by name and quoted by the *Bhujabalanibandha* to be described a little later on. I have not been able to secure any Ms. of the *Bhimaparākrama*. Aufrecht in his Catalogue does not refer to any Ms. of this work, but only mentions digests where the *Bhimaparākrama* is quoted. The three groups of verses quoted by *Bhujabalanibandha* as from the *Bhimaparākrama* are cited in the note below.7 The first group of two verses, that in fn. a declare that Monday. Wednesday, Thursday and Friday always lead to fulfilment of actions undertaken and the other three week days are to be employed only when expressly stated, that the Sun is recommended for dyes made from Kusumbha, lac and *manjiṣṭhā*, Mars for ornaments of gold and Saturn for work in which iron enters. The next group of two verses deal with the terrifying effects of the *karaṇa* called *viṣṭi*. A very curious state of things is that the two lengthy verses about *viṣṭi* are found in the Ms. of *Rājamārtaṇḍa* (verses 1021-22). Not only so, many verses quoted as those of the *Bhimaparākrama* and the *Bhujabalibandha* are found in the *Rājamārtaṇḍa* or *vice versa* as the sequel will show. The probable explanation of this will be offered later on.

The *Ekādaśitattva* of Raghunandana (p. 6, Jivananda's edn.) quotes a verse of *Bhimaparākrama* on *Sankrānti*. That verse is quoted in the *Varṣakriyākaumudi* (p. 215) as from the *Bhaviṣya Purāṇa*. It will later on be shown that the *Bhujabalanibandha* and the *Rājamārtaṇḍa* borrow without acknowledgement numerous verses from Varāhamihira's works, from Manu, *Purāṇas* and others. It is therefore quite possible that the *Bhīmaparākrama* took over a verse from the *Bhaviṣya Purāṇa*. About twelve verses are quoted from the *Bhimaparākarma* by the *Suddhikaumudi* and in most of these the quotation is preceded or followed by a verse or verses from the *Rājamārtaṇḍa*. The verse *vivāha-cūḍā* apparently quoted from *Bhimaparākrama* in *Suddhikaumudī*. p. 223, is *Rājamārtaṇḍa* folio 67, verse 1057. A verse quoted from the *Bhimaparākrama* by the *Suddhikaumudi*, p. 229, is almost the same as a verse in

Bhujabala. The *Tithitattva* (Vol. I. p. 150) quotes a verse from the *Bhimaparākrama* on *Sankrānti*. The *Malamāsatattva* (Vol. I. p. 828) quotes two verses from the *Bhimaparākrama* on Jupiter being in Leo, and the same *Tattva* appears to quote (p. 778) a prose passage from it. The commentary of Mahādeva on the *Ratnamālā* of Sripati quotes a verse from the *Bhimaparākrama* about the lords of the *ṛtus* (seasons). In the commentary called *Mārtaṇḍavallabhā* (composed in A.D. 1573) on the *Muhūrtamārtaṇḍa* in the *BBRAS* collection of Mss. a half verse is quoted from the *Bhimaparākrama* to the effect that when a bridegroom is taking his recently married bride (to his own village or place) the usual astrological rule that one should not proceed on a journey when one has to face Venus does not hold good. The *Bhimaparākrama* is quoted about fifty times in the several *Tattvas* of Raghunandana. Some quotations have already been cited above. The *Jyotiṣatattva* quotes from it on pp. 571, 581, 594 (two verses), 606 (three verses, one of which occurs also on p. 594), 608 (two verses), 614, 621 ten verses), 630 (two), 663 (three verses, introduced with the words *bhimaparākrame bhojarājaḥ)*, 675-676 (a long prose passage which provides for certain rites for the removal of fever if it seized a man on anyone of the *nakṣatras* from *Kṛttikā* to Bharaṃ), 679 (1 verses on the *nakṣatras* and astrological aspects favourable for taking medicine), 685 (two, both of which occur in *Bhujabala*, pp. 245-46. verses 1199, 1202. on how to yoke bulls in ploughing), 702 (three verses), 717 (6 verses, the first of which occurs in *Bhujabala* p. 285, v. 1284), 722 (4 verses). The *Tithitattva* quotes verses from the *Bhimaparākrama* on pp. 55 (one verse on *Goṣthāṣṭamī*). 146 (on *Agastyārghyadāna*), the *Māsatattva* quotes from it on pp. 775 (when marriage should not be performed). 761 (on intercalary month) and the *Samskāratattva*, pp. 884-85 (what should not be done in an intercalary month). It was not possible owing to the labour involved to find out whether all these verses could be identified with verses from *Bhmjabala* and *Rājamartaṇḍa*. A few identifications have been noted below.

The *Bhujabalanibandha* is an extensive work containing about 1740 verses in different metres, though the *anuṣṭubh* metre preponderates. It is divided into 18 chapters, but expressmention of the number of the chapter in the colophons is made only up to the 6th chapter. The opening verse contains an obeisance to Hari and states that the work undertaken is a *Jyotiḥ-śāstra*. The second verse asserts that (an army of) a thousand elephants and four thousand horses cannot secure what a single astrologer well-versed in *deśa* (country) and *kāla* (time) can do. The colophon at the end of the several chapters and at the end of the work tell us that it is the composition of Bhojarāja called Bhujabala and is a *Jyotiḥ-śāstra*.

The contents may be briefly stated as follows: The astrological effects of the moon when occupying the several houses in the horoscope, the relative powers of *tithi, nakṣatra*, week-day, *karaṇa yoga*, of the Sun and the Moon, time when the Moon is powerful or not, the periods for which each planet occupies a division of *nakṣatras* into groups; (pp. 1-5); what effects the several planet produce by themselves or when occupying the several houses in a horoscope (pp. 5-10); week-days (pp. 10-13); the activities that are successful when undertaken on each of the groups; what actions should be done on the several *tithis* and the presiding deities of the fifteen *tithis;* the names of the twelve *rāsis*, the twelve

houses and the nine planets (including Rāhu and Ketu), friendship, enmity or indifference among planets (pp. 14-19); the figures of the several *nakṣatras* and the number of individual stars in each *nakṣatra;* classification of *nakṣatras* as *ūrdhvamukha, adhomulha, sthira, cara, tikṣṇa ugra, mṛtyu, amṛta* (pp. 28-34); usages of countries as to some of the astrological conjunctions (pp. 34-36); *karaṇas* and effects of *karaṇas* like *viṣṭi* (pp. 36-39); classification of *māsas* (months) and the acts that should be done in each kind of *māsa; tithis* called *yugādi* (pp. 40-42); meaning of *vargottama*, the effects thereof, *dvipada* and *catuṣpada rāsis* (pp. 42-44); meaning of *paṇaphera, apoclima, trikoṇa caturasra, upacaya;* division of *nakṣatras* into *deva, nara* and *rākṣasa* (pp. 44-46); *gaṇḍadoṣa* and its *śānti* (pp. 49-51); *grahāriṣṭas* and their *śānti* (pp. 54-64); special features of persons born on the twelve *rāśis* and on each of the twelve *rāśis* as the *lagna* (pp. 65-69); on *dṛṣtis* of planets and the results of the *dṛṣtis* of each planet of the other planets (pp. 70-74); results of a planet being in its own house or being *paramocca* or *paramanica* (pp. 75-76); on *Horā* and *Drekkāṇa* and the limbs of the Kālapuruṣa (pp. 76-79); results of the yogas called *anaphā, sunaphā, durudhura* and *kemadruma* (pp. 80-81); the results of the several planets being in one of the twelve *bhāvas* in the horoscope for men and women (pp. 82-88); results of the several arrangements or order of planets in a horoscope such as *Dhvaja, Ekāvali, Rājahamsa, kemadruma, Lalāṭi* (pp. 89-98); *das'ās* and *antardaśās* of the several planets, the maximum life of a person being held to be 108 years (verse 451. p. 99) *aṣṭottaraśatam bhadre paramāyuḥ prakirtitam*. (pp. 100-116); years for each planet in case of the *vimśottaridaśā* (pp. 118-19); rites to be performed on the birth of a child, worship of Saṣthidevi (on the 6th day after birth); the astrological aspects on which the child is to be named or which are to be avoided for *nāmakaraṇa* and *niṣkramana* (taking out of the house); the charateristics of the name to be given to a child (pp. 119-23); tāmbūlabhakṣaṇa and *annaprās'*and *karṇavedha* and for the usual shaving of grown up persons (pp. 127-34); proper aspects and proper year for *upanayana* and the proper characteristics of a student's staff, *samāvartana* (pp. 135-47); *vivāha* and favourable positions of the Sun and Jupiter for it, proper age for a girl's marriage from eight to ten, if a girl remains unmarried up to a late age, no astrological requirements to be seen except the Moon's position and the rising sign at the time of marriage, desirable qualities in a bridegroom and in a bride, undesirable qualities in both, undesirable astrological aspects between the horoscopes of the bride and bridegroom such as *ṣaḍaṣṭaka* and *dvirdvādaśa; varṇa* and *vaśya*; astrology based on *nakṣṭaka* and *dvirdvādaśa; varṇa* and *vaśya;* astrology based on *nakṣatras* only such as the *nakṣatra* of birth, 10th, 16th, 18th, 23rd, 25th therefrom; results of the positions of the planets in relation to the sign of birth and the 7th house (*jāmitra*); *godhūli-yoga* as an auspicious time for marriage and in the case of married women; all actions are to be done on astrological aspects derived from the husband's horoscope except in the case of marriage and *garbhādhāna* (pp. 147-72); results of the week-day, *tithi, nakṣatra, lagna* on which a woman has monthly illness for the first time and rites for preventing evil effects (pp. 180-91); *tithis* and days on which sexual intercourse is to be had or is to be avoided (pp. 192-98); auspicious times for *pumsavana,* for parting or the pregnant woman's hair, for putting on new clothes, for education in crafts and in *nātya,* for the construction of a lotus pool or a well (pp. 192-213); examination of a building site, astrological aspects for the beginning of the construction of a house and the auspicious

trees on a site (pp. 213-28); inauspicious happenings when land is being measured for a house, position and number of doors in a house (pp. 228-36); auspicious times for entering the capital for coronation, for an audience of the king, for seeking service and auspicious times for putting the plough in the field, for sowing corn, for gathering in crops, for planting trees and creepers (pp. 237-53); recovery of lost or stolen property and times for taking medicines and examination of the times of rainfall (pp. 256-69); on seeing the *khanjana* bird (p. 270); the auspicious and inauspicious times for marching on an invasion, good and bad dreams, results of several planets being in the same *rāśi* (pp. 271-329); discussion about *tithis* (pp. 329-31); conclusions about *ekādasi*, the *tithis* on which several gods go to sleep and become awake (pp. 330-34); rules about *sankrānti*, *vāhanas* of *sankrānti*, bath on *sankrānti*; the appropriate *dānas* on each of the twelve *sankrāntis* in a year (pp. 334-47); on eclipses (pp. 347-48); intercalary month (*adhimāsa* or *malamāsa* or *malimluc*); the religious acts allowed and forbidden in an intercalary month (pp. 348-50); the religious rites in the twelve months of the year; Indradhvaja festival, offering *arghya* to Agastya, *śrāddha* when the Sun is in the sign of Virgo; honouring horses in Aśvina bright half and *śānti* connected therewith, *Durgāṣṭami* and *Mahānavami*; propitiating yama, *Goṣṭhāṣṭami*. *Bhiṣmāṣṭami*, *Ardhodayayoga*, *Govindadvādasi*, *Aśkāṣṭami*, auspicious times for performing *s'ātika* and *pauṣtika* rites (pp. 350-68).

The original Ms. of this large work appears to be rather incorrect. In some cases there are gaps, i.e., some letters or some parts of verses are missing. The author offers only a few explanations of his own, as on pp. (of the transcript) 23, 26, 118, 172-73, 209, 216, 235, 236, 261, 256-57, 259-60. As there are gaps in the Ms. and it is corrupt some names of authorities may be lost. The Ms. of *Bhujabala* names a number of authorities, viz., Aṅgiras (p. 274). Atri (p. 295), Bhāradvāja (pp. 295-96). Bhrgu (295-96). Bhrguja (pp. 311 on Yātrā). Cyavana (p. 295). Cūdāmani (p. 313. a mutilated verse, which looks like a *Prākrt* verse).17 Devala (p. 179). Durgāditya (p. 206. p. 13 where Durgādayah appears to be a copyist's mistake for Durgāditya). Garga (241, 246, 250, 261, 272, 274, 295, 296, 312). Gautama (295). Hārita *273, 274), Hari (44), Indra (as author of Yāmala 287), Parās;ara (127, 222, 261, 274), *Ratnasārasamuccaya* (39), Satya (127, 145), Srinvāsa (99, 317, 322), Varāha (44, 130, 135, 200, 221, 234, 264, 275), Vasiṣtha (212, 295), Vātsya (168, 261), Vyāsa (124, 125, 264, 275), Vasiṣtha (212, 295), Vātsya (168, 261), Vyāsa (124, 125, 168, 206, 211, 271, 273), *Vyavahārasamuccaya*,18 an astrological work (173), Yavanādhipati (58). It also refers to other works in the word *ogranthāntare* (pp. 115, 165). Among the *Purāṇas* the *Bralma Purāṇa* (365), *Devi Purāṇa* (337), *Nāradiya* (116) and *Vāmana Purāṇa* (343) have been quoted,20 but I have not been able to locate all these verses. Two works most frequently quoted are the *Dipikā* (44, 200, 235, 246, 275, 318, 319, 320, 321, 323) and the *Ratnamālā*21 (pp. 4, 10-12, 209, 252). Several verses from the *Ratnamāla (Jyotiṣaratnamāla)* of Sripati are borrowed by the *Bhujabalanibandha* expressly or without acknowledgement. On p. 4 *Bhujabala* quotes the verse *na khalu bahulapakṣe* expressly from the *Ratnamālā* (ch. X15). The verse *rājābhiṣeka (Bhujabala*, pp. 10-12, verses 48-55) on what should be undertaken on the several week-days are expressly taken from the *Ratnamāla* (III.2-9). The verse on *Vidyārambha vidyārambhaḥ suragurusita (Bhujabala*, p. 209) is expressly quoted from *Ratnamālā* (III. 19). On p. 252 a verse about the prognostications

on the fall of *palli* (houselizard) or a chameleon on several parts of the body is expressly quoted from the *Ratnamālā*, but I have not been able to trace it. The verse *manvarka-digvāstu* in *Bhujabala* (p. 14) on *Kulikavelā* is the same as *Ratnamālā* (III.21); *Bhujabala* (p. 37) three verses beginning with *pauṣṭikasthira* on the several *karaṇas* are the same as *Ratnamālā*, V. 4-5 and 12; the verse *kṛtakautukamangalacāruvapuḥ* of *Bhujabala* (pp. 178-79) is the same as *Ratnamālā* (XVI.35). From the *Ratnamālā*22 are borrowed two verses by *Bhujabala* that provide that a learned astrologer should not break the usages of families and countries by sticking to the words of the (astrological) *śāstra* since those usages have their root in the recensions of the *Veda* that are now lost and since if (those usages are not observed), the fault of violating established religious usages might be incurred and then another verse explains how Gauḍas, Dākṣiṇātyas, Lāṭas (country about modern Surat) and people from Avanti (country of which Ujjayini was capital) differ in their usages about astrologically favourable positions of planets at the time of marriage.

These verses cited in the preceding sentences are borrowed without acknowledgment. The *Dīpikā* cannot be the *Suddhidipikā* of Srinivāsa if the date of one of his works, the *Gaṇitacintāmaṇi*, given by MM. Haraprasad Sastri in Vol. III of his Catalogue. Preface, p. vi (ad 1158) be correct. The *Suddhikaumudi* quotes five verses from *Paśupatidipikā* (pp. 206, 210-12, 229) and distinguishes it from *Suddhidipikā* quoted on the same pages. Several dozen verses have been traced by me as borrowed by *Bhujabala* from Varāhmihira's works without acknowledgment. The verse *Sutamadana* (*Bhujabala*, p. 63) *is Bṛhajjātaka*, VI.11 and the whole chapter XVII of the same work (verses 1-13) is bodily taken over by *Bhujabala* (pp. 64-67) on the characteristics of persons having *Meṣa* and the other *rāśis; Bṛhat-samhitā*, 103-13 on *Godhūlimuhūrta* is same as *BB*., pp. 177-841. The verse *jyotiṣam āgamaśāstram (Bṛhat-samhitā* 9.7) is quoted in a somewhat mutilated form on p., 178 of the *Bhujabala*. Seven verses from the *Bṛhatsamhitā* (906.12) on the classification of *nakṣatras* into *sthira, cara, tikṣṇa* are taken up by *Bhujabala* on pp. 26-27. Over twenty verses on dreams are borrowed by *Bhujabala* on 297-304 from *Bṛhadyogayātrā* of Varāhamihira ch. 16.1-31 (with the omission of some verses). On *Bhujabala*, p. 42 the three verses *Vaiśākha-māsasya* on *Yugādya tithis* are the same as *Viṣṇu Purāṇa*, III. 14.12-14 and on *Bhujabala*, p. 193, the two verses *caturdaśyāṣṭami* on *parva* days are *Viṣṇu Purāṇa*, III.11.118-19, *Bhujabala*, p. 152 (*kāman āmaraṇāt*) is *Manu*, IX.89 and pp. 153-54 about the auspicious characteristics of a marriageable maiden *avyangāngim* are the same as *Manu*. III. 8-10 (but in a different order). *Parāśarasmṛti*, VII.5-8 *(aṣṭavarṣā bhavet, mātā caiva, yastām)* occur in *Bhujabala*, p. 151, and Nārada (*stri-pumsayoga* verses 36 and 37) are the same as *Bhujabala* (pp. 153-54), *viz., unmattaḥ* and *dirghaḥ*.

On p. 50 there is a verse which appears to be in Prākrit.

It would involve great labour to identify all the verses that are borrowed from other works. Such a labour would be appropriate only if an edition based on several Mss. is brought out. A few examples where borrowing is probable are mentioned here. On p. 355 the *Bhujabala* sets out four verses on the proper time for *śrāddha* all of which appear to be quotations from earlier *Smṛtis* or *Purāṇas*. The *Srāddhaviveka* of Rudradhara (Chowkhamba series) quotes a verse from *Bhujabalabhima* the first half of which is cited from Uśanas by

the *Smṛticandrikā* (on *Srāddha*, p. 492). The *Bhujabala* has taken the verse *kālanarasyā-vayavān* (p. 79, verse 368) from the *Sārāvali* of Kalyāṇavarman (III. 6).

From certain verses of the *Bhujabala* it appears that the work was addressed to a queen or a noble lady. *Vide*. pp. 64, 99 and 100.26

Not only does the Ms. of *Bhujabalanibandha* ascribe it to king Bhoja, but medieval digests expressly ascribe the work to Bhojadeva. It has however to be noticed that the work is generally called by these digests *Bhujabalabhima*. In the *Malamāsatattva (Jiv.* Vol. I, p. 743) it is said *vyaktam bhujabale grahaśuddhim abdaśuddhum...kanyakānām*. The *Samskāratattva* (p. 912) quotes three verses from *Bhujabala* (and not *Bhujabalabhima)* which occur in the transcript of *Bhujabala*, pp 201-22, verses 961, 967, 968 (but in a different order and with some variant readings). On p. 928 of the *Samskāratattva* two verses from *Bhujabala* (and not—*balabhima*) on the topic as to when *upanayana* and other auspicious rites should not be undertaken are cited. I was not able to trace these. It is possible to hold that the *Kālaviveka* of Jimūtavāhana knew the *Bhujabalanibandha*. It quotes two texts as from Bhojadeva, the first of which is found in *Bhujabala*, p. 346. The *Varṣakriyākaumudi* (p. 104) states that these two verses were quoted by the Kāmadhenu from the *Kūrma Purāṇa*.

In the *Tithitattva* of Raghunandana (Jiv., p. 25) two verses are quoted from Bhojarāja, which are found in *Bhujabalanibandha*. Similarly, on the rites of the sixth day after the birth of a son the *Kṛtyatattva* quotes a passage inclusive of a verse from Bhojarāja, which verse occurs is *Bhujabaia*.

We must now turn to the *Rājamārtaṇḍa*. This is a valuable work on astrology in its relation to topics of *Dharmaśāstra*. The *Suddhikaumudi*, the *Srāddhakaumudi* and the *Varṣakriyākaumudi* of Govindānanda and some *Tattvas* of Raghunandana quote over two hundred verses from the *Rājamārtaṇḍa*. The first seven verses are introductory. The first verse performs an obeisance to the Sun, who, it is alleged, was the author of an extensive *Jyotiḥśāstra* in three branches and who came down again to the earth in the form of Varāhamihira. The second verse promises that the author would propound what is excellent and clear in the views of former teachers. It is said in the 4th and 6th introductory verses that a family priest, an astronomer, a councillor and an astrologer—these four should always be supported by a king and that long life and prosperity follow where honour is paid to the gods, the astrologer, the family priest, the *gurus*, planets and *nakṣatras*. In the Ms. I have used there are no chapters, but only the matters dealt with are mentioned in a verse or at the end of the treatment of a topic words like *iti yātrāyām māsaśuddiḥ* are added in reddish yellow pigment. The contents of the work may be briefly stated as follows; the several names of the Sun, Moon, the other planets. Rāhu and Ketu; the several names of the 27 *nakṣatras* from Aśvini to Revati and the lords of the 27 *nakṣatras* (verses 16-41) names of the twelve *rāśis* from Meṣa to Mina and the distribution of the 27 *nakṣatras* among the twelve *rāśis* (42-53); lords of the twelve *rāśis* (54); the horoscope of a married woman's husband alone is to be considered in all actions relating to her except in a few cases such as *garbhādhāna*, when both horoscopes are to be considered, and in the case of a widow her own horoscope is to be considered (55-63); astrological rules about tying up the hair

(bālabandha) after monthly illness for three days (64-75); astrological rules about proper days for sexual intercourse after monthly illness and the qualities of the child to be born (76-91) and inauspicious *nakṣatras* and times for the rite of *pumsavana* (92-124); what is *gaṇḍa* and *gaṇḍānta* and *śānti* rites for obviating evil effects thereof (125-48); about *Ṣḍvarga* (156-59); *horāphala* (160-72); the physical and mental qualities due to the seven *grahas* from the Sun to Saturn (173-79); when *riṣṭa (aśubha)* is averted (180-85); seven kinds of *bala* of the planets and their causing desirable or undesirable results (186-95); *veśi* and its conjunctions (196-201); vṛddhiś*rāddha* to be performed at the time of the several *samskāras* before and after the birth of a son, on *cūdākarana, upanayana*, mrriage, establishment of an image, entering a newly built house (202-13); rules about naming a child (214-20); times and astrological details about *niskramana* (carrying of the child out of the house), making it (first taste), a *tāmbula* and food (221-53); rules and aspects about *cūdākarana* (254-85); *karṇavedha* (piercing the lobes of the child's ears, verses 286-96); *vidyarambha* (296-303); times, astrological and other rules for *upanayana* and the length and wood of the staff (304-79); astrological rules about the age of the marriage for girls, condemnation of parents and brothers for not getting a girl married before she is 12 years of age; when no astrological matters are to be looked into at the marriage of a girl. usages of countries as to astrology requirements about favourable position of Juptter in marriage auspicious months for marriage. The results of journeying when Venus is in front, favourable aspects for putting on new clothes and ornaments (380-652); king's marching out for an invasion, when the time of his birth is known or not known (653-804), classification of *tithis* into Nandā, Bhadrā, Vijayā, Riktā, Pūṇā and the *tithis* that are commended for all actions and the effects of marching on the several *tithis*, the several *karaṇas* the several week-days, *nakṣatras*, zodiacal signs rising, the planets in the several directions, the *navāms'a* of the *lagna*, effects of the planets being in the several houses of the king's horoscope, and the eight guardians of the quarters from the east in order, *viz.*, Sun, Venus, Mars, Rāhu, Saturn, Moon, Mercury and Jupiter, what is *Lolātiyoga*, consideration of the question in what direction a king should march, results of marching on *Vyatipātayoga*, or in rains out of season, proper month for marching, procedure of *prasthāna* (654-779); the six *nakṣatras*, viz., of birth, of 10th, 16th, 20th, 23rd, and 25th from birth are respectively called *ādya, karma, sānghātika, samudāya, vaināś'ika* and *mānasa;* in the case of the king there are three more to be considered, viz., *jāti* (caste), *deśa* and the *nakṣatra* on which he was crowned and appropriate rites of *śānti* when these are affected by evil aspects and for removing the effects of solar and lunar eclipses (780-804); building of a house *(vāstu)*, sixteen kinds of houses due to their shape, viz., square, rectangular, round, triangular, etc., effects of planting trees in the several directions round the house, trees and flowering plants that should be or should not be near the house, position of a house on a house site, houses facing certain directions to be avoided, at what times, what positions of a house should be used for what purposes (805-84); removal of inauspicious signs when measuring the site or digging foundations (885-99); astrological aspects at entering a newly built house (900-8); construction and dedication of wells, tanks, temples, monasteries, swimming baths and *caityas* and auspicious and inauspicious astrological details about them (909-43); times for digging a well, for beginning agricultural

operations, for planting trees (944-52); about *ūrdhvamukha* and other *nakṣatras*, when to begin eating new crops recently harvested, on what astrological conjunctions one may begin taking medicine, when to ride a horse or elephant for the first time, about *dhaniṣṭhāpancaka* (953-1000); the effects of the Moon being eighth from the *lagna* or an evil planet being in the 8th house, evil effects of doing a thing on *viṣṭi* (1001-22); Yogas, unfavourable *lagna*, Nandā and other *tithis* in relations to planets (1023-45); *Amṛtasiddhi, Dagdhayoga, Mṛtyuyoga* and Jupiter in the sign Leo, effects of Jupiter and Venus being in the stage of *bāla, vṛddha* and sandhyāgata (1046-77); about the intercalary month and what actions are allowed or forbidden therein (1078-1115); effects of the *pūjā* of the Sun on 7th *tithi* after a fast on 6th and of Siva on the 8th or 14th, and of Devi on 9th and 13th, rules about the *vedha* of a *tithi* by another (1116-31); three kinds of tithis, viz., *kharva, darpa* and *himsra*, rules about the appropriate *tithi* on which a *vrata* is to be performed when on the same day two *tithis* are mixed up (1136-47); rules about *Ekādaśīvrata* (1148-71); *saptamyarkavrata*, the *śayana* (lying down) and *utthāna* of various gods, particularly of Viṣṇu (1173-90); *upākarma, yugādi tithis* (1200-5); procedure of offering *arghya* to Agastya (1206-28); *Srāvanadvādasi* and *Jayantivrata* (1229-55); *Haritālikā* (1256-59); on the raising of *Indradhvaja* (1260-92); *Upākarma* of followers of *Sāmaveda* (1293-94) on *śrāddhas* (1295-1326); *Durgotsava* and *nirājana* (1327-34); *Kaumudi*, Viṣṇu's rising from sleep (1335-38); *Pretacaturdaśi* (1339-45); *Sukharātri, Bhrātṛdvitiyā, Akāśadipa* (1346-57); *Kārtikasnāna* and *Māghasnāna* (1358-68); *Māghasaptami, Bhiṣmāṣṭami, Puṣyadvādasi, Aśokāṣṭami* (1369-80); *Caitrāvali, Mahājyaiṣṭhi, Mahāmāghi* and other Full Moon days with the attribute *mahā* and the holy places where each of them has special sanctity (1381-92); *Sāvitrivrata, pāṣāṇacaturthi, Araṇyaṣaṣṭhi, Daśaharā* (1394-1405); on *Sankrānti* (1406-29); day called *Trahaspṛk* explained, *dinaksaya*, the four kinds of *māsas* and the actions for which they are appropriate (1430-35); *prāṇa, vikalā, kalā, amśa, rāsi, yugas* and similar measures of time (1436-42); *vakrāticāra* of planets (1443-47); prognostications from clothes eaten by rats, burnt or torn; signs on the different parts of the body of a male prognosticating his qualities and achievements; the effects when *Meṣa* or one of the other eleven *rāsis* is the *lagna* of a person (1456-62).

The *Rājamārtaṇḍa* does not mention by name any *nibandha* but only ancient writers. The verses therein are numbered from one to one hundred and sometimes the total number is given in hundreds and sometimes not (the figures for 600,900,1000,1100, 1300 and 1400 are wanting). The following are mentioned by name, most of them being writers on astronomy and astrology: angiras (1448), Atri (775), Bhāguri (134), Bhāradvāja (769), Bhārgava (317), Bhrgu (691, 769, 878), Bhṛguja (probably the same as Bhārgava, 556), Bṛhaspati (134), Cyavana (775), Garga (59, 362, 370, 560, 1059), Gārgya (769, 1040, 1443), Gautama (59, 61, 775, 1064), Hārita33 (59, 106ff, 376, 1057), Manittha (729), Māṇḍavya (376, 479, 482, 1443), Manu (56), Parās'ara (307, 319, 376, 479, 1443), Raibhya (479), Satya (307, 319, 745), Saunaka (1064), Vālmiki (370, 1064), Varāhamihira (1, 137), Vasiṣṭha (729, 769), Vātsya (479), Viśālākṣa (129), Viśvāmitra (133), Viṣṇu (130), Vyāsa (370), Yavana (387), Yavanāḥ (255, 275, 457, 1055), Yavanācārya (128), Yavanādhipati (134, 197). It is very probable that the last four names stand for only one another. It appears probable that some Greek of high standing settled in India, learnt Sanskrit and composed a large Sanskrit work on

astrology from which Varāhamihra, Utpala and others draw several hundred verses. There is the Besnagar column (Garuḍadhvaja) inscription (of 2nd century BC) which recites that Heliodora, son of Diya (Dion), the yona (Yavana) ambassador of king Antalikita (Antialkidas) to king Bhāgabhadra in India who had become a Bhāgavata raised that coloumn in honour of Vāsudeva (JRAS, 1909, p. 1033, 1087, and JBBRAS, vol. 23, 1910, p. 104, JOR, xv (1945-46, 135-37).

The *Rājamārtaṇḍa* quotes numerous verses without acknowledgment from several sources. A few examples may be given. *Manu*, III. 235 (*trini śrāddhe pavitrāṇi*) is the same as RM, 1301 and the two verses *Manu*, III.171-72 occur in *Rājamārtaṇḍa*, 544-45 (on *parivedana*), the verse *punarbhojanam adhvānam* RM. 1323 is *kūrma Purāṇa*, II.22.6, RM. 86 (*caturdaśyāṣṭami caiva*) is the same as *Viṣṇu Purāṇa*, III.11.118, the two verses of RM. 1229-30 are among 4 verses cited by the *Varṣakriyākaumudi*) (p. 320) from the RM (but taken from the *Bhavisya Purāṇa*). A large number of verses is taken from the *Brhat-samhitā*, e.g., Brhatsamhitā 98.14 (*nrpājnayā brāhmana-sammatena*) is the same as RM folio 18a verse 279; RM. 780-81 (about the names of the *nakṣatra* of birth and the 10th, 16th, 18th, 23rd and 25th from the *janmanakṣatra*) are taken from Varāhamihira's *Yogayātrā*, IX. 1-2. The *Rājamārtaṇḍa* borrows several verses from the *Ratnamālā*. For instance, the verse of *Ratnamālā*, XV.37 (on *prasthāna*) occur in *Rājamārtaṇḍa* (folio 49b verse 776) and also in Bhujabala, p. 295 verse 1336. It is somewhat remarkable that the 2nd introductory verse of the *Rājamārtaṇḍa* is the same as the second introductory verse of Utpala's commentary on the *Bṛhajjātaka*. As Utpala wrote his commentary in *saka* 888 (AD 966) and as he is mentioned by Al-beruni in his work on India composed in AD 1030, it follows that the Rājamārtaṇḍa borrows this verse from Utpala, *vide* my paper on 'Varāhamihira and Utpala' in *JBBRAS*, Vol. 24-25, New Series. 1948-49, pp. 22-23 and 30-31 for the date of Utpala.

Hundreds of verses are the same in both *Bhujabala* and *Rājamārtaṇḍa*. Considerations of space forbid a detailed examination. A few examples alone are cited here. *RM*. 56 and 48 (*striṇām sarvakriyārambhe* and *vivāhakāryam*) are *Bhujabala*, p. 180 verses 851-52; four verses in *RM*. 77, 86-88 are BB, pp. 192-93 verses 913-16; RM, 96, 103-5 are BB, 955, 957-59; RM, 106-11 (dialogue of Vyāsa and Hārita) are BB. pp. 198-99 verses 943-48; RM, 123-25 are BB, p. 201 verses 960-62; RM, 360-63 are the same as BB, 649, 652-53, 684; RM, 540; 541, 552, 555, 559 are BB, verses 845-46, 842, 840, 143; the five verses and the *mantra* at the end in *gaṇḍa-doṣaśānti* in RM. 144-48 are the same as BB. p. 57 verses 226-30. Verses quoted as from *Rājamārtaṇḍa* in the medieval digests are found in it and also in Bhujabala. For example, the verse *yātrām vivāham* which is cited in the Suddhikaumudi (p.222) from the *Rājamārtaṇḍa* is found in the latter (folio 67a, verse 1058) and also in *Bhujabala* (p. 274 verse 236). The verse *vāpikūpataḍāga-yāgagamanam* cited in the *Suddhi-kaumudi* (p.223) from the *Bhimaparākrama* occurs in the *Bhujabala*, p. 271 (verse 222) except that the last quarter is slightly different. Verses 143-44, 150 of *Bhujabala* are interesting. They inculcate that the astrologer should not be a hide-bound pedant, but must observe the customs and usages of various countries and families even though they may be opposed to the dicta of *śāstra*. The *Rājamārtaṇḍa* also contains these verses. Both works refer to usages of several countries about the astrological requirements in the case of marriages.

So late a work as the *Kālatattvavivecana* of Raghunātha (AD 1620) refers to the *tithis* on which several deities lie down for sleep according to Bhojadeva. Both the Rājamārtaṇḍa (folio 72a verse 1175) and the *Bhujabala* (p. 333 verse 1532) present the same verse on this matter. It is remarkable that two verses on the *karaṇa* called *viṣṭi* which are quoted by the *Bhujabala* from the *Bhimaparākrama* occur in *Rājamārtaṇḍa* (verses 1021-22).

In a few cases exactly opposite views appear to have been taken by *Bhujabala* and the Ms. of *Rājamārtaṇḍa*. The latter states in verse307, 'Satya, Parāśara and other sages lay down that proper of auspicious years to be calculated in the case of *upanayana* and marriage are to be calculated from conception, while others say that they are to be calculated from birth, but *Bhujabala* attributes to Satya. Parāśara and *gurus* the view that the years are to be calculated from birth and to others from conception. Various explanations are possible to account for this conflict, viz., the copyists are at fault or the author changed his mind or that the compilers of the two works commissioned by king Bhoja were different. To me the third alternative appears more probable.

Sometimes, there is contradiction between the quotation from *Rājamārtaṇḍa* in a digest and the Ms. of the *Rājamārtaṇḍa*. For example, *Varṣakriyākaumudi*, p. 116 quotes from *Rājamārtaṇḍa* the prescription that for obviating the effects of undesirable *nādis* one should give to a young brāhmana in order cow's milk, a cake of flour with jaggery, *ghi*, curds, honey or *pāyasa* (rice grains cooked in milk), while the Ms. of *Rājamārtaṇḍa* provides that the things mentioned above should be given to an old brāhamaṇa.

Though both in the *Bhujabala* and in the *Rājamārtaṇḍa* many of the topics dealt with are common yet there is some difference of treatment in the two works. The *Bhujabala* is a little larger than the *Rājamārtaṇḍa* and is almost exclusively concerned with purely astrological matter. The *Bhujabala* devotes verses 450-529 to *daśās* and *antardaśās* but in the *Rājamārtaṇḍa* there is nothing corresponding to this topic. On the other hand, the *Bhujabala* devotes only nine verses (1521-29) to the subject of intercalary month, while the *Rājamārtaṇḍa* devotes 38 verses to it (four verses being the same in both); the *Bhujabala* devotes verses 1502-14 to a dissertation on *tithis* in general, while *Rājamārtaṇḍa* has 32 verses on that topic (1116-47); the subject of offering *arghya* to Agastya takes up 23 verses in the *Rājamārtaṇḍa* (1206-28), while *Bhujabala* devotes only one verse to that subject; the treatment of *gaṇḍadoṣas* is more elaborate in *Rājamārtaṇḍa* (verses 92-148) as compared with that in the *Bhujabala* (215-51).

It is somewhat remarkable that in some cases the verses quotes from the *Rājamārtaṇḍa* in such digests as the *Varṣakriyākaumudi* and *Suddhikaumudi* are not all found in the Ms. of *Rājamārtaṇḍa*. For example, the *Varsakriyākaumudi* quotes (on p. 320) 4 verses from the *Rājamārtaṇḍa* and adds that they were taken from the *Bhaviṣya Purāṇa*, but in the Ms. of *Rājamārtaṇḍa* only two of them occur (1229-30). On pp. 341-42 the *Varṣakriyā-kaumudi* quotes 14 verses on the procedure of offering *arghya* to Agastya from *Rājamārtaṇḍa*. Only eight are common to both. Out of five verses quoted by the *Suddhikaumudi* (p. 198) from the *Rājamārtaṇḍa* only three occur in my Ms. of the latter (viz, verses 617, 618, 607). Similarly, out of three verses cited by the *Suddhi-kaumudi* (p.204) from the *Rājamārtaṇḍa* only one (verse 401) occurs in the Ms. of the latter work and the other two are found in *Bhujabala*.

This state of things leads one to infer that either the Ms. used by me is defective and the digests referred to above had better Mss. before them or that the *Rājamārtaṇḍa* was revised and enlarged after it was first composed. In this connection it is pertinent to note that some *Tattbvas* of Raghunandana several times mention or quote from a work called *Bṛhad-rājamārtaṇḍa* and in some of these the quotation from the *Bṛhad-rājamārtaṇḍa* is immediately followed by a quotation from the *Rājamārtaṇḍa*. A few examples may be cited. On p. 25 of the *tithitattva* (Jiv. Vol. 1) there is mention of the view of the *Bṛhad-rājamārtaṇḍa* and a little lower down two verses of Bhojarāja (which occur in *Bhujabala*, p. 129 verse 600 and p. 132 verse 615) are quoted and immediately afterwards two verses (63 and 277) of *Rājamārtaṇḍa* are cited. The *Jyotiṣtattva* (Jiv. I, p. 605), after quoting from the *Bhujabalabhima* a verse that in the case of maidens the sages declare that the proper (or ausipicious) character of planets, the year, ayana, season, month and day are to be considered (only) till they become ten years old, and a vese from *Kṛtyacintāmaṇi*, quotes a verse from the *Bṛhand-rājamārtaṇḍa* to the effect that all ausipicious acts except marriage, upanayana and *yātrā* (king's starting on an invasion) may be done even when Venus is invisible. On p. 655 of the *Jyotiṣtattva* some verse on *karṇavedha* are quoted from *Māṇḍavya*, *Bṛhand-rājamārtaṇḍa* and *Kṛtyacinitāmani* and then immediately afterwards a verse on the subject of the inausipicious times for *karṇavedha* is cited from *Rājamārtaṇḍa*. The *Malamāsatattva* (Jiv. I.p. 745) cites a verse from the *Bṛhad-rājamārtaṇḍa* to the effect that if a woman undergoes on ceremony of *simantomayana* and gives birth to a son, then after placing the child on her lap that ceremony should be performed on her. In *Samskāratattva* (913) the verse quoted from the *Bṛhad-rājamārtaṇḍa* in the *Malamāsatatta*, p.745 and two more are cited from the latter work on *simantonnayana*. These verses cannot be traced in the *Rājamārtaṇḍa* nor in the *Bhujabala*. On p. 826 (Jiv., Vol. 1) the *Malamāsatattva* quotes a verse from *Brhad-rājamārtaṇḍa* about the retrograde motion of mars and other planets. The *Brhad-rājamārtaṇḍa* is also quoted in *Tithitattva*. p. 166, in *Malamāsatattva*, p. 824 (two verses), 845 (same as in *Tithitattva*, p. 166) and *Samskārattattva*, p. 913 (3 verses, one of which is the same as the one quoted by *Malamāsatattva* on p. 745).

It appears to me from the preceding discussion that the *Rājamārtaṇḍa* and the *Brhad-rājamārtaṇḍa* are distinct works, but the former has been far more popular than the latter.

A few words must be said about the *Vyavahārasamuccaya*. There is a Ms. in the Bombay University's Mss. collection called *Vyavahārasamuccaya* decribed in Prof. Devasthali's Cat, of Sanskrit and Prākrit Mss. in the Bombay University Library (p. 190, No. 457). The verse cited above (in note 18) as quoted from the *Vyavahārasamuccaya* was found by me in that Ms. on folio 18b (verse 192). The work contains only 677 verses, i.e., it is less than half of the extent of the *Bhujabala* or *Rājamārtaṇḍa*. In the colophon at the end the work is tyled *Jyotiḥśāstra* and is said to have been composed by Upādhyāya Musthara. This colopho creates a problem. Musthara is a strange name and seems to be corrupt. W

have the evidence of the *Malamāsatattva* (p. 831) which quotes a verse from *Bhojade a- Vyavahārasamuccaya* that Bhoja wrote a *Vyavahārasamuccaya*. A few quotations from the *V avahārasamuccaya* are noted later on. Even on a cursory examination it turned out

hat dozens of verses therein are indentical with verses from *Bhujabala* and *Rājanārtaṇḍa*. On folio 8a there is verse 84 (*gauryāh putro...sasthike namaḥ*) which is the same as *Bhujabala*, p. 121 verse 557. Four verses of Rājamārtaṇḍa (1389-92) about the special merit accruing to batthers at different tirthas on Maha¯ma¯ghi and other Paurnima¯s occur in the *Vyavahārasamuccaya* on folio 49b. A characteristic verse on *Ya¯tra¯* occurs in both *Vyavahārasamuccaya* folio 60b and *Bhujabala*. A verse (*vāpikūpatadāgayāgagamanam...astam gate bhārgave*) of the *Vyavahārasamuccaya* (folio 4a, verse 37) is quoted with a slight variation in the 4th *pada* by the *Suddhikaumudi* (p. 223) from the *Bhimaparākrama*. The *Nirnaya-sindhu* (I. p. 23) quotes two verses from *Vyavahārasamuccaya* on the *karaṇa* called *viṣṭi* or *bhadrā*. The same work quotes a verse which sets out the ten *doṣas* of a *muhūrta* enumerated in *Vyavahārasamuccaya*.

We know from the Mitākṣarā (on Yāj., III.17) that Dhāreśvara was styled *ācārya* and was spoken of as *sūri* by the *Smṛticandrikā* (on *śrāddha*, p. 257, Gharpure's edn.). If the *Vyavahārasamuccaya* was complied by some scholar at the bidding of Bhoja the work could have been ascribed to him. It is possible that Musthara is a corruption of *Camūsthira* formed on the analogy of Yudhisthira as an epithet of Bhoja and that some scribe called him Upādhyāya. I am of the opinion that there is weighty evidence for holding that the *Vyavahārasamuccaya* quoted in *Bhujabala* is a work of Bhoja (or one compiled under his patronage). The following is a list of striking verses from the Ms. of *Vyavahārasamuccaya*, that occur in the *Bhujabala* or *Rājamārtaṇḍa* or both. Some abbreviations are used here in this list, viz., *BP* for *Bhimaparākrama*, *BB* for *Bhujabala*, RM for *Rājamārtaṇḍa*, VS for *Vyavahārasamuccaya* and v. for verse or verses.

1. *VS* folio 1, v. 2 and 3. *śaśānkatārayoḥ* and *janmatrisaṣṭha* are same in BB, p. 1, v. 3 and 6.
2. *VS*, v. 52, folio 5b *kṛvāticāram* is *BB*, p. 273, v. 1234, while the *Suddhikaumudi*, p. 229 quotes it from *BP*.
3. *VS* folio 5b, v. 58 *svaśuddhyā yoṣitām karma* is *RM* folio 4b, v. 59.
4. *VS* folio 8a, v. 85 *tṛtiye śaśinaḥ pakṣe' is BB*. p.121, v. 559.
5. *VS* folio 8b, v. 93-95 *sārdhamāsadvaye, dinakaracandra*, and *duścikya-lābhāri* are *BB*, p. 124 v. 574-76 and *RM* folio 14b, v. 230, 234.
6. *VS* folio 11b, v. 122 *na janmamāse* is *BB*, p. 135, v. 623.
7. *VS* folio 12b, v. 132 *abde viśuddhe* is *RM* folio 24a, v. 376.
8. *VS* folio 13a, v. 137 *saptami cāṣṭamividdhā* is *BB*, p. 139. v. 652 and RM folio 23a, v. 363 Both read *aṣṭami saptamividdhā.*
9. *VS* folio 13b, v. 144 *grahe ravindvoḥ* is *BB*, p. 145, v. 680.
10. *VS* folio 14a, v. 147, *pauṣādi caturo* is *RM* folio, 23b, v. 368.
11. *VS* folio 21a, v. 226, *godhūlim trividhām* is *BB*, p. 176, v. 840 and *RM* folio 35a, v. 555.
12. *VS* folio, 43b *yugmāgnikṛta* and *pratipadyapy-amāvāsya'* are same as *RM* folio 69b

verses 1123-24 and *BB*, p. 329, v. 1502-3.

13. *VS* folio 43b, *ekādaśyāṣṭami* and *kharvo darpastathā* are *BB*, p. 330, v. 1504 and 1510 and *RM*, folio 69b and 70a, v. 1121 and 1132.
14. *VS* folio 44a *suklapakṣe tithir* is *RM* folio 70b, v. 1136 and *BB*, p. 331, v. 1511.
15. *VS* folio 45b *mandā mandākini* is *BB*, folio 335, v. 1544.
16. *VS* voho 50b and 51a *ehyeht sarvāmara, vaprahasta* are the same as *RM* folio 77a, v. 1289-90 (*mantras* at the end of Indradhvaja festival).

The state of affairs described at length in the preceding pages is somewhat bewildering. It is clear, however, that the *Bhimaparākrama* and the *Vyavahārasamuccaya* were both composed before the *Bhujabala*, since both are quoted in the *Bhujabala*. It appears to me that the Rājamārtaṇḍa was composed *Bhujabala*, since the former deals far more elaborately with certain subjects than the latter. Similarly, the *Bṛhad-rājamārtaṇḍa* is later than the *Rājamārtaṇḍa*. The important question is why five distinct works (*Bhimaparākrama, Vyavahārasamuccaya, Bhujabala, Rājamārtaṇḍa* and *Bṛhad-rājamārtaṇḍa*), very often covering the same topics were given to the world, if the author was king Bhoja himself. It is difficult to give a categorical reply to this question. One has to remember that distinguished authors often write two sets of books on the same subject. The name of Varāhamihira who preceded Bhoja by at least five centuries at once leaps up to one's mind. Varāhamihira composed his famous major work, the *Bṛhat-samhitā* and also a shorter work called *Samāsa-samhitā* or *Svalpa-samhitā, Vivāhapaṭala* and *Bṛhadvivāhapatala, Yogayātrā* and *Bṛhad-yogayātrā*. In these double sets of works, the same ideas, rules and principles are couched in different words though here and there the same verses occur in the different works. But here we have at least five works ascribed to Bhoja in which many topics are the same and hundreds of verses are common. It appears to me probable that Bhoja held discussions with his *paṇḍits* on matters of astrology and its bearing on *Dharmaśāstra*, commissioned several of them to compose in their own way several works, the *paṇḍits* took their own time to write the works and they were made public at different times, but as the inspiration to write them came from Bhoja, their great patron, they were ascribed to him. This hypothesis would explain all the known facts, particularly the large number of works composed on the same subjects by apparently the same author, the occurrence of hundreds of common verses in *Bhujabala* and *Rājamārtaṇḍa* and the circumstance that *Bhujabala* quotes the *Bhimaparākrama* and *Vyavahāra-samuccaya*.

A word may be said about the titles *Bhujabala* (or *Bhujabalabhima*) and *Bhimaparākrama*. They were *birudas* applied to or assumed by Bhoja, the first meaning 'whose strength is in his arms' or 'who was a veritable' Bhima in the prowess of his arms' and the second meaning 'whose valour was terrific' or 'whose valour was like that of Bhima, the Pāṇḍava hero'. Further, it is not surprising if some later copyist wrote *upādhyāya camū camūsthira'*. It should be noted that the *Mitākṣarā* on *Yājnavalkya*, III.24 speaks of Dhāres'varācārya. For high-sounding names of royal or high placed authors. *Vide History of Dharmaśāstra*, Vol. I, p. 407 note 993 (for Dalapati), p. 411 note 1904 (Pratāparudra), p. 445 note 1114 for Virasimha, patron of Mitramiśra.

But we have not yet done with Bhoja and his works on *Dharmas'āstra* and astrology. It appears from quotations in the *Kṛtyaratnākara* and other works that he composed a work variously called *Bhūpālasamuccaya* or *Bhūpālakṛtyasamuccaya* or briefly *Krtyasamuccaya* on *vratas, dānas*, etc. On p. 313 the *Kṛtyaratnākara* tells us that a certain vrata was called *Navamivrata* by *Bhūpālakṛtyasamuccaya* and on p. 496 the same work states that what *Bhūpālakṛtyasamuccaya* called *Tiladvādasi* was decribed by the *Kalpataru* and *Pārijāta* not under *vratas* but under *Naiyatakālika* (i.e., matters which it was one's duty to perforn at certain fixed times). After quoting two verses about the importance of *upavāsa* and *nakta* the *Kṛtyaratnākara* (p. 58) states that the *Pārijāta* held the view that the verse enjoins the observance of *nakta* and the first three *pādas* of it are in the nature of an *anuvāda* and explains away the view of Bhojabhūpāla. On p. 205 the *Kṛtyaratnākara Bhojabhūpālasamuccaya* states that *Viṣṇu* is to be raised from his couch on *Kārtika-śukla-ekādasi*, which leads on to the proper conclusion that *Viṣṇu* goes to sleep on *Aṣāḍdha-śukla-ekādasi*. In several other places the *Kṛtyaratnākara* speaks of *Kṛtyasamuccaya* only (on pp. 289, 449, 512, 515, 536). But it is clear from the way in which the *Kṛtyaratnākara* deals with the names *Bhūpālasamuccaya* and *Kṛtyasamuccaya* that reference tis to *Bhūpālakṛtyasamuccaya*. The *Kṛtyaratnākara* (p. 171) refers to the view of Bhūpāla on the procedure of the gift of a back antelope skin from *Matsya Purāna* (ch. 206). On p 175, the *Kṛtyaratnākara* mentions Bhūpāla in the same breath with *Kalpataru*. The *Kṛtyaratnākara* (p. 635) quotes an interesting verse and remarks on the view of Bhūpāla thereon. In the *Samayapradipa* of Sridatta which is a work earlier than the *Kṛtyaratnākara* the views of Bhoja-bhūpāla are mentioned. For example, on folio 8b it first refers to the interpretation of texts relied upon by Gaudas as regards decision when *tithis* are mixed up (*viddhā*), it refers to the views of Bhūpāla. On the materials so far available the reference must be held to be to the *Bhūpālākṛtyasamuccaya*. Even a somewhat late work like the *Nirṇayasindhu* (composed in AD 1612) mentions the view of *Bhūpāla* on the question of the avoidance of certain vegetables, fruits, corn, salt, oil, shaving and sexual intercourse on certain *tithis* from the first to the 15th.

There is another work called *Vidvajjanavallabha* ascribed to king Bhoja dealing with astrological matters; *vide Descriptive Catalogue of Mss.*, Tanjore, Vol, XVI, No. 11604 (for two Mss. of it in 18 chapters such as *lābha, śatrusamāgama, yātrāphala*, etc.); there is also a fragment of it in the Bikaner Library (vide Mitra's Catalogue No. 753) and another fragment in Florence. I have not been able to secure the Mss. of this work or a transcript. This paper has already become rather long. The *Vidvajjanavallabha*, may be dealt with in a separate paper later on.

In conclusion I express the hope that critical editions of the *Ratnamālā* (about first half of 11th century AD) and of the *Rājamārtaṇḍa* so profusely quoted in medieval *Dharmaśāstra* works would be undertaken by some young scholars in the near future. There are two good Mss. of the *Ratnamālā* in the *BBRAS* and one Ms. with the commentary of Mahādeva composed in *saka* 1185 (i.e., AD 1263) in Bombay University Library and several Mss. in the Bhandarkar Oriental Insititute, Poona. Of the *Rājamārtaṇḍa* also there are many Mss. These two are amongst the earliest extant *nibandhas* on such topics of *Dharmaśāstra* as *samskāras*, intercalary month, *tithis*, *vratas* and *utsavas* of various kinds.

KULLUKABHAṬṬA

The date of Kullukabhaṭṭa is shrouded in mystery obscurity. MM. Dr. P.V. Kane remarks that the date of Kullukabhaṭṭa can not be settled with certainty. In this respect, Dr. George Buhler, MM. Chakravarti, Asatosha Mukerjee, J.C. Ghose and Dr. P.V. Kane have propounded their own theories. Before the fixation of the proper date of Kulluka, however, it will be proper on the part of the present author to state clearly the view points expressed by the above mentioned scholars and subjects their views to scrutiny or critical examination.

Theory of Dr. George Buhler

Dr. Buhler has placed Kullukabhaṭṭa, the commentator of the Manu-Smṛti in the 15th century A.D. particularly in his discussion in the Sacred Books of the East Series, Vol. XXV, p. CXXXI, mainly relying upon the fact that Kullukabhaṭṭa is quoted by Raghunandana in the beginning of the 10th century A.D.

Examination of this argument

(i) It must be pointed out that Dr. Buhler has not given an elaborate treatment to this problem as such. He has, in fact, given the meagre treatment to this topic.

(ii) Dr. Buhler has not considered the other works on Dharma-Sāstra indicating the influence on the writing of Kulluka.

(iii) The learned doctor also has not consulted the other works of Kullūkabhaṭṭa i.e. Srāddha-Sāgara and others possibly because these books were not, then, published by any scholar or any research Institute.

(iv) The learned scholar also has not consulted the vast Dharma-sāstra works utilised by Kullūka, paurāṇic texts quoted by him and the grammatical authorities employed by him for the exhibition of his deep scholarship in the Manvarthamuktāvali and Srāddha-Sāgara.

In the light of the above arguments, it is better not to agree with the above mentioned learned authority on the Dharma-Sāstra.

II. Theroy of J.C. Ghose and Asutosh Mukerjee

(1) J.C. Ghose in his 'Principles of Hindu law' has placed Kullūkabhaṭṭa in the 15th century A.D., without quoting any authorities in support.

(ii) Asutosh Mukerjee remarks that Kullūka is to be placed in the 15th Century A.D. He has introduced discussion in the Indian Law Report, 48, Calcutta p. 688.

Examination of the view of Ghose and Mukerjee

(I) It may be pointed out here that both the scholars have not made any thorough discussion in their works and have not based their theories on firm foundation.

(ii) Besides, as both these also have not consulted several sources for properly discussing this problem, the present author does not think it proper to subject their view to further criticism. He categorically states that the theory of these scholars stands rejected.

III. The Theory of MM. Chakravarti

MM. Chakravarti has devoted one printed paragraph for the date of Kullūkabhaṭṭa in the Journal of the Asiatic Society, Bengal, Vol, XI-1815, p. 345.

MM. Chakravarti states that there is a mention of Kullūka's views on the Manu-Smṛti in the commentary of Srnārha Acārya Cuḍāmaṇi on the Dāyabhāga of Jimutavāhana.

He further adds that in the works of Sūlapāni, there is no mention of Kullūka and his works. It may be observed here that Sulapāṇi is also the accredited master of Dharma-Sāstra particularly from Bengal.

He further draws our attention to Vardhamāna Upādhyāya's Daṇḍaviveka. This author has quoted Kulluka's commentary on the Manu-Smṛti about 50 times.

In the light of these arguments, MM. Chakravarti concludes that Kulluka is to be placed in the 15th century A.D.

Examination of the theory of Chakravarti

(1) As regards the point of the commentary of Srinātha Acārya Cūdāmaṇi on the Dāyabhaga of Jimutavāhana, it may be casually pointed out that the above author has also written a commentary on the Srāddha-Viveka of Sūlapāni. Jimutavāhana, the author of the Dāyabhāga is placed by MM. Kane in his 'History of Dharma-Sāstra between 1090 and 1130 A.D. Sūlapāni, the celebrated author from Bengal, is placed between 1375 and 1460 A.D. by Dr. Kane. And Srinātha Ācārya Cūdāmaṇi is placed by Dr. Kane between 1470 and 1540 A.D. If all these dates are accepted, then Kullūka who is quoted by Srinātha Acārya Cūḍāmani, will have to be placed in the first or second quarter of the 15th century A.D. If this surmise is accepted, then the date of Kullūkabhaṭṭa can not be fixed in the 15th century A.D.

(2) As regards the silence of Sūlapāṇi about the work of Kullūka it can be remarked that this argument is of a negative character. Besides, Kullūka also is silent about the works of Sūlapāni. Hence it will not be proper on our part to attach more weight to this negative argument of Chakravarti.

(3) Here it is necessary to draw the attention of the scholars to editing of the Tithi-Viveka of Sūlapāṇi, by Dr. S.C. Bannerji from Calcutta and particularly published in the Poona Orientalist Vol. VI, Nos. 3 and 4. The present author has edited the work Srāddha-Sāgara of Kullūkabhaṭṭa. In the 15th chapter of the Srāddha-Sāgara, there are some stanzas Nos 22, 23 and 24 quoted from the Viṣṇu Dharmottara Purāna. The present author could not trace these stanzas in the extant Viṣṇu-Dharmottara Purāṇa. These stanzas, however, could be found in the Tithi-Viveka of Sūlapāṇi. Besides, the stanza from the Sātātapa Smṛti

quoted by Kullūka in the Srāddha-Sāgara also could be found in the Tithi Viveka of Sūlapāṇi. If this important piece of evidence is considered, then one will not be far from the truth if one simply holds that Kulluka seems to have made adequate use of the works on Dharma-Sāstra from Bengal and particularly Sulapāṇi.

(4) As reards the fifty quotations from Kullūka's cmmentary on the Manu-Smṛti in the Daṇḍaviveka of Vardhamāna Upādhyāya, it can be respectfully submitted as below. (i) Vardhamāna Upādhyāya is the pupil of Vācaspatimiśra, the famous author on Dharma-Sāstra from Mithilā. Vācaspatimis'ra is placed by Dr. Kane between 1425 and 1480 A.D. It, therefore, follows that the literary activity of Vardhamana Upādhyāya, the author of Daṇḍaviveka, might have started either in the last quarter of the 15th century A.D. or in the first or second quarter of the 16th century. A.D.

(5) Dr. Kane remarks that Sūlapāni, Rudradhara and Vācaspatimisra are more or less contemporaries of one another. The very fact that they have not quoted Kulluka indicates that Kullūka has flourished after them.

(6) Kullūkabhaṭṭa in his Srāddha-Sāgara has quoted Vācaspatimisra. He also refers to Gauḍa Vācaspati in his Srāddha Sāgara. These two references clearly distinguish Vāscas-patimis'ra, the writer on Dharma-Sāstra from Mithila, from Vāscapati who comes from Bengal. It is worthy of note here that about Gauḍa Vācaspati, we know nothing except perhaps a bare reference to him. If this internal evidence is accepted, then naturally Kullūka will have to be placed in the 16th Century A.D. and possible as the contemporary of Vardhamāna Upādhyāya.

(7) Incidentally, however, it must be emphasised here that MM. Chakravarti has not consulted the internal evidence tendered by Manvarthamuktāvalli and Srāddha-Sāgara quoting several Dharma-Sāstra authorities, paurāṇic authorities and grammatical authorities. His arguments, however, are purely based on the external evidence only. Hence, the present author is constrained to observe that the arguments of MM. Chakravarti are one-sided, purely based on the external evidence and completely displaying the studied silence about the Srāddha-Sāgara. It is therefore, proper on the part of the present author to reject the view of Chakravarti with due deference to the profound scholarship exhibited by him.

IV. Theory of MM. Dr. P.V. Kane

Dr. Kane has placed Kullukabhaṭṭa between 1150 A.D. and 1300 A.D. on the basis of the following arguments:

(1) Dr. Kane points out that Kullūka has quoted Bhojadeva, Govindarāja, Lakṣmidhara's Kṛtyakalataru and Halāyudha. He is therefore, certainly later than 1200 A.D.

(2) Dr. Kane draws attention to the places from the Smṛtitattva of Raghunandana, while Kullūka is either mentioned or criticised. It appears that he has mentioned Kulluka at least ten times as shown by Dr. Kane.

(3) Govindānanda is his Srāddha-Kriyā-Kaumudi refers to Kullūka's explanation on the Manu-Smṛti III.258.

(4) Candesvara in his Rājnaniti-ratnākara quotes Kullūka's explanation of the word 'Rajā' on the Manu-Smṛti VII.1.

(5) Dr. Kane also points out that in Kulluka's Srāddha-Sāgara, we have a reference to Prabhākara and Kamalākarabhaṭṭa (on Kāla and Kāma being devatas) and in another place to Gauḍa-maithila-Mayukhabhaṭṭah (which are probably marginal notes creeping into the manuscript or refers to authors other than the well-known ones.

(6) Dr. Kane also advances a negative argument that Kulluka is silent on the work of Jimutavāhana. This is explicable in two ways (1) Kulluka wrote in Kashi and (2) He did not write in Bengal.

Examination of the Arguments of Dr. Kane

(1) As regards the first argument of Dr. Kane, there is on scope for any difference of opinion.

(2) As reards the second argument of Dr. Kane, it can be respectfully submitted that Raghunandana who is placed by Dr. Kane between 1510 and 1580 has quoted passages from Kullūka's commentary on the Manu-Smṛti. The present author has great pleasure in pointing out that he has examined all the places relied upon by Dr. Kane and has observed that in the Smṛti Tattvas there is no reference to the Srāddha-Sāgara of Kullukabhaṭṭa. This silence on the part of Raghumandana is very important. It further exhibits that he has not before him the Srāddha-Sāgara of Kulūkabhaṭṭa, possibly because it seems to have been written at a very later stage of life. On the contrary, it is evident by this evidence, that Kullūka must have spent some part of his life in Bengal even after his Manvartha-muktāvali in Kasi or he might have become so famous by his commentary on the Manu-Smṛti that Raghunandana was very much impressed by the same.

(3) As regards the third argument of Dr. Kane, it should be noted that Govindānanda in his Srāddha-Kriyā-Kaumudi or Varṣakriyā-Kaumudi or Dāna-Kriyā-Kaumudi has quoted only from the Manvarthamuktāvali and not from the Srāddha-Sāgara. Dr. Kane has proved that Govindānanda is a writer from Bengal and at the time of his writing the Srāddha-kriyā-Kaumudi, Kullūka might not have dreamt of writing Srādha-Sāgara. If this line of argument is accepted, then it is further evident that Kullūka might have migrated from Bengal to Benares and from Benares to Bengal quite often.

(4) As regards the fourth argument of Dr. Kane, it may be respectfully sumitted that Kullūka has quoted Maithila-Ratnākara in his Srāddha Sāgara. This Maithila Ratnākara is certainly Caṇḍeśvara who is the celebrated author of the works of Dāna Ratnākara, Vivāda Ratnākara, etc. and he is placed by Dr. Kane between 1314 and 1370. If this is accepted, then it is difficult to place Kulluka before 1300 A.D.

(5) Now the question arises as to how a reference to the commentary of Kulluka on the Manu Smṛti VII.I occurs in the Rājaniti Ratnākara. It is very likely that this might have

crept into the manuscript from the marginal note or some else might have been responsible for this interpolation. The other internal evidence of the Srāddha Sāgara makes it highly improbable to place Kulluka before 1300 A.D.

(6) Besides, the way in which the passage is quoted in the Rājaniti Ratnākara from the Manvarthamuktāvali on the Manu-Smṛti VII.I, shows some difference in the actual passage of the Manvarthamuktāvali as critically edited and published in the Bombay edition of Nirnaya Sagar press.

(7) In addition to this, the internal evidence of the Srāddha Sāgara clearly goes against the external evidence relied upon by Dr. Kane to place Kullūka in the 13th century A.D.

(8) Dr. Kane's fifth argument in respect of Prabhākara and Kamalākarabhaṭṭa gives more stress on his imaginative power. He should have taken pretty care to see whether the passage quoted in the Srāddha Sāgara is really available in the Nirṇaya-Sindhu of Kamalākarabhaṭṭa. Dr. Kane states that there is a reference to Kamalākarabhaṭṭa only once in the Srāddha Sāgara. In fact, I have collected about six references from the Srāddha Sāgara making clear references to Kamalākarabhaṭṭa. Is it fair to treat all the six places as marginal notes? The present author makes bold to say that if all these six references are examined, then it simply shows that Kullūka has before him the Nirṇaya-Sindhu of Kamalākarabhaṭṭa. If this line of argument is preferred, then it would be difficult to place Kulluka before 1300 A.D. In fact, Kulluka will have to be placed after 1612 A.D. which is the date of the composition of the Nirṇaya Sindhu as proved by Dr. Kane himself.

(9) Dr. Kane also draws our attention to the important expression 'Gauḍa-Maithila-Mayūkhabhaṭṭāḥ in the Srāddha-Sāgara of Kullūka. He further holds that either this is a marginal note or a reference to Mayukhabhaṭṭa refers to the author other than well-known. It is hard to agree with Dr. Kane on this point. Here Kulluka states that the stanzas quoted by Gauḍa-Maithila-Mayūkhabhaṭṭāh, from the Brahma Purāṇa, are baseless or doubtful. If, however, these stanzas are traced to the original sources, one finds that the second line of the stanza is found quoted in the Śrāddha Mayūkha from the Āditya Purāṇa. In this very context, it may be further pointed out that in the Srāddha Candrikā, p. 28 these two stanzas are quoted from Āditya Purāṇa as relied on even by Hemādri. Possibly Kullūka may have before him some other manuscript of Srāddha Mayūkha which is not now available to us. As the quoted text is found quoted in theSrāddha-Mayūkha, one can not make bold to say that this is also a marginal note.

(10) Besides, there is no point in stating that a reference to Mayūkhabhaṭṭa is to some other author other than the well-known author Nilakaṇṭha. Here the table may be turned against Dr. Kane by showing that in the long list of the writers on Dharma-Sāstra, there is no other writer known as Mayukhabhaṭṭa who is other than Nilakaṇṭha. Dr. Kane has placed Nilakaṇṭha, the author of the 12 Mayukhas between 1610 and 1645 so far as his literary activity is concerned. If, however, the chronological order of the Mayukhas prepared by Dr. Kane himself is accepted, then it seems that Nilakaṇṭha has composed his Srāddha-Mayūkha in or about 1617 or 1618 A.D. If this evidence is accepted, then it would be difficult

to place Kulluka before 1300 A.D. In fact, all these references to the important evidence lead one to the pointed conclusion that Kulluka will have to be placed after 1618 A.D.

(11) Moreover, there is no point in saying that Kullūka should have referred to all his predecessors in the field of Dharma-Sāstra. His silence about Jimutavāhana also is not a conclusive evidence on this point. Unless the other works of Kullūka such as Aśuca Sāgara and Vivāda-Sāgara are brought to light, one can not say that Kullūka has not referred to Jimutavāhana. The scope of the commentary Manvarthamuktāvali is said to be limited as compared to the nature of a digest work. Hence one has no business to expect Jimutavāhana in the Manvarthamuktāvall.

(12) Kullūka has also quoted Vācaspati Gauḍa at one place. A thorough study of this manuscript reveals that for some chapters Kullūka has relied on Raghunandana's Srāddha-Tattva, for some chapters, he depended on Kṛtyakalpataru-Srāddha Kaṇḍa. It would be perhaps more correct to say that Kullūka has made the proper use of the Srāddha Tattva of Ragunandana. This helps us to moderate conclusion that Kullūka was aware of the progress in the field of Dharma-Sāstra particularly at Bengal, principally due to his migration from Benares to Bengal and from Bengal to Benares. In view of the above arguments, one is justified in observing that the theory of Dr. Kane for the date of Kullūka is unconvincing and deserves to be rejected.

Dr. Moghe's Independent arguments

(1) If, however, Kullūka is to be placed in the 13th century A.D. as suggested by Dr. Kane, then how is possible to explain the studied silence of the prominent writers on Dharma-Sāstra like Hemadri (1270 A.D.), Kamalākarabhaṭṭa (1612 to 1640), Nandapaṇdita (1580-1630 A.D.), Divākarabhaṭṭa the grandson of Nilakaṇṭha, Nilakaṇṭha (1615-1645 A.D.), Bālambhaṭṭa Pāyagunde (1730—1820 A.D.), Vaidyanātha Dikṣita (1600-1686 A.D.) and more particularly Raghunandana (1510 A.D. to 1580 A.D.) on the Srāddha Sāgara of Kullūkabhaṭṭa for a period of 4 or 5 centuries?

(2) Kās'inatha Upādhyāya (1790-1791) has referred to the author of the Srāddha Sāgara in the plural number. However, the quotation of the Srāddha Sāgara in the Nirnaya Sindhu can not be traced in the extant manuscript of the Srāddha-Sāgara critically edited by the present author. But a reference to Kullūkabhaṭṭa in the Dharma-Sindhu, p. 568 can be correctly understood only if we place Kullūkabhaṭṭa between 1530 to 1620 A.D.

(3) It is further interesting to note that Nilakaṇṭha quotes Kullūka as an authority in his Samskāra Mayūkha and Vyavahāra-Mayūkha and not in the Śrāddha-Mayūkha. The very fact that he does not refer to Kullūka in his monograph on the Srāddha, supports the contention that at that time it was not written by Kullūkabhaṭṭa and possibly the Śrāddha-Sāgara might have been written after the Srāddha Mayūkha of Nilakaṇṭha.

(4) All the above mentioned advocates of different theories have not at all consulted the references to Gauḍa Vācaspati, Vācaspatimiśra, Nārāyaṇabhaṭṭa, Maithila Ratnākara,

and Mayukhabhaṭṭa in the right perspective.

(5) It would be interesting to note that the study of this manuscript Srāddha-Sāgara helps one to conclude that Kullūka has revised some of his explanations already given in his Manvarthamuktāvali particularly in comparison with the Srāddha-Sāgara. Besides, he has also introduced a lot of Purva Mimasa discussion in the body of the text of the Srāddha-Sāgara as compared with his performance in his Manvarthamuktāvali. The stage of vevision shows maturity of mind.

In the light of the above discussion, the present author has placed Kullūkabhaṭṭa between 1525 A.D. to 1620 A.D. He appears to have lead a long life like Dr. Kane and it is due to this that we hardly get a reference to his Srāddha-Sāgara in the vast range of Dharma-Sāstra literature.

KUTTĀ: A CLASS OF LAND-TENURES IN SOUTH INDIA

One of the most important problems faced by the administration in the early days of British rule in India was how to ascertain and distinguish the different types of land-tenure prevalent there. It was obvious that a great variety of rights existed by custom in respect of land, and when the government proposed to collect revenue it was essential to know from which party or parties it could be expected and in what manner and proportions it should be levied. The task was completed by elaborate local inquiries, but very little help was anticipated or received from legal textbooks in Sanskrit, which might have been expected to provide information upon so obviously fundamental a subject. But here and there details which throw light upon medieval practices are to be found in the books, and these seem to connect tolerably well with the results of the inquiries made during the nineteenth century. An instance of this seems worthy of quoting, not merely for its comparative rarity and for the juristic skill exhibited by the author, but chiefly because of the intrinsic interest of one of the tenures in question, which has a high curiosity-value and is probably of a species confined to India.

The most interesting of a set of passages is found in the *Vyavahāra-kāṇḍa* ('Civil law section') of the gigantic digest called *Sarawvati-vilāsa* (*c.* AD. 1500-25) attributed to the Emperor Pratāpa Rudra Gajapati. *Arthaśāstra-viśārada Vidyālankāra* Dr. R. Shama Sastry printed this section in the Mysore Sanskrit Series in 1927, and the first extract is to be found on pp. 281-3. But since he did not abstain from printing some gibberish as well as some more or less obvious mistakes it is necessary to print a clearer version of the passage before proceeding to a translation.

Towards the end of the subsection entitled *Dattāpradānikam*, or 'Non-delivery of Gift', when he is considering the meaning of the prohibition of gift of *sāmānyādi-dravya*, 'assets in which more than one person has an interest, and the like', he turns to the general proposition that an owner of an inferior interest might donate the asset in question with the assent of the owner of the superior interest. This apparently unobjectionable theory is countered by an opposite argument to the effect that the owner of the inferior interest

could not convey more than the same inferior interest (if so much, of his own volition) and that the assent of the owner of the superior interest could not clothe him with a power which only the latter possessed in his own right. Assuming that this last theory was sound our author was reminded of a practical difficulty. There existed in his own part of India (Āndhra-Orissa) a preculiar tenure called *kuttā*. The tenant of the *kuttā* might, and perhaps often did, run the risk of forfeiting his tenure for breach of its conditions and/or—and here was an immediate problem—for transfer of the land to a third party. Similarly the owner might wish to transfer his own title, but would this be valid? How was this tensure to be coped with? First of all one must decide into what category of relationship it should be placed. Our author proceeds as follows:

loke kuttākhyo vyavahāraḥ nūla-svāminas sakāśād gṛha-kṣetrādikan gṛhitvā, tad-upacayāpacayau kauttikasya mayaiva soḍhavyāv iti pāribhāṣikas samasti, aparan ca kuttākhyo mūla-svāmina aurdhva-daihikādikaṃ tat-kṛtam ṛṇan ca tadiya-gṛha-kṣetrādinā nivartya saṃśodhya cāvaśiṣṭam asti cet grahitavyam, nāsti cen māstv iti pārbhāṣikaḥ.

sa ca kuttākhya upacaya-padābhiapyas: tasyopacayākhya-pāribhāṣikatven-aupādhika-svatva-sankramopādhitayā, etat-prakaraṇe ṛṇādānākye vivāda-pade gopyādy-adhikāre 'ntarbhāva evāstv iti cent, maivam, ṛṇādānākhyaṃ vivāda-padam_ śodhya-mocya-koṭi-dvayāvalambanena pravṛttam; s'odhyam abandhakam ṛṇam; mocyaṃ sa-bandhakaṃ gopyādi-prakṛtikam; evan dvi-prakāram ṛṇādānā-khyaṃ vivāda-padam. Loke upacayāpara-paryāya-kuttā-rūpasya śodhya-mocya-rūpa-prakāra-dvayāsambhavāt. kin ca ṛṇādāne uttamarṇa-gata upacayaḥ, kuttātmake tv adhamarṇa-gate iti na tatrāntarbhāva aupacayikasyeti.

apara āhuḥ:—gopyādāv antarbhāvo vācya iti. Devadatta-kṛtarṇāpākaraṇe jāte prakṛta-vivāde mocaniya-viṣayatāsti. kintu yāvaj-jivānuṣṭeya-pitṛ-kriyā-karaṇasyādhi-rūpeṇa svi-kārāt tan-mukhena na vimocyatvam, upanayana-saṃskārasyādhyāpana-kriyāngatvena tan-nivṛttyā nivṛttau pravṛttānān gurur abhyuttheyaḥ pravayasaḥ pratyuttheya ityādy upanita-dharmāṇāṃ yāvaj-jivānuvṛttes tan-mukhenopanayanasyāpi yāvaj-jivānuvṛtti-vat, maivam, prakṛtasya vyavahārasyāhita-dravya-viṣayatvābhāvāt, pratyuta pākṣikāpacaya-bhāra-sahitatvād ādhau tadabhāvāt, kuttākhyasyaupacayikasya ṛṇādāne 'ntarbhāvayitum aśakyatvāt.

dattāpradānike 'ntarbhāvo nyāyyaḥ, dattāpradānikan caturvidhan dānam avalambyāvatiṣṭhate: dattam adattan deyam adeyan ceti dānamārgaś caturvidha ity uktaṃ prāk, dattan dvividham: sopādhikan nirupādhikan ceti, kuttātmakan dānaṃ sopādhikam iti kṛtvā sopādhika-datta-rūpatvenaupacayikasya tatraivāntarbhāva iti rahasyam. Devadattasyarṇāpākaraṇan tad-uddeśa-prasakta-deva-pitṛ-kriyā-karaṇaṃ vā viṣayi-kṛtya pravṛttam aupacayika-viṣayan dattāpradānike 'ntarbhavati.

This may be translated as follows:

In practice we have a transaction known as *kuttā*. A man takes a house or lands and so on from their original owner and both the profit and the loss therefrom accure to the tenant-in-*kuttā*, i.e. must be borne by himself, and there is a special contractual term to this effect. Moreover—the technical definition of this right proceeds—the tenant, with the aid of the house, lands, and so on, carries out the funeral and subsequent relious rites appertaining

to the original owner of the property and pays off the debts which he has incurred, and if any balance remains over he may appropriate it, while if there be none it cannot be helped.

It may be suggested that this *kuttā* ought really to appear in that section among the topics of litigation dealt with in this chapter which treats of Non-payment of Debt, where we deal with the rights of mortgagees in posession for custody and other varieties of mortgagees, on the ground that the word 'profit' is employed in describing it, and therefore it possesses the character of a transfer of Property which is qualified by the technical term relative to profit. But this is not so. The section on Non-payment of Debt proceeds upon the basis that there are two alternatives: debts to be paid and debts to be released. A debt which is 'to be paid' is an unsecured bebt, while a debt 'to be released' is a secured debt of the nature of a possessory mortgage for custody and so on; consequently the section called Non-payment of Debt has a double aspect. But in practice neither aspect of either sort, seured or unsecured, is or its reverse. Moreover, in Non-payment of Debt the profit accrues to the creditor, while in the *kuttā*, which consists in the risk of making a profit, or its reverse. Moreover, in Non-payment of Debt the profit accrues to the creditor, while in the *kuttā* it accrues to the debtor. Consequently the party entitled to the profit cannot be treated in that section. This is my view.

Others hold the view that the *kuttā* is comprehended within a mortgage in possession for custody or some other type of mortgage. In a normal lawsuit, when debts incurred by X are paid off, the question of releasing securities which he granted may well arise: but when land has been taken by way of security for the performance of ancestral worship to be continued as long as the taker's life lasts, there can for that very reason be no question of reasing the security. One might indeed object that this is quite comparable with the fact that in a sense even the rite of the thread-ceremony persists throughout life simply by reason of the life-long continuance of the duties proper to one who has been invested with the sacred thread, such as standing up to greet the teacher and standing up to show respect for elders, duties which persist in and from the moment when the thread-ceremony ceases and which actually persist by reason of the cessation of the thread-ceremony, by virtue of the fact that that sacrament forms a portion of the rite which consists in the duty of teaching the Veda to the initiate. But this would be a mistake, since in the institution in question there is no suggestion of assets being mortgaged. On the contrary, since the tenure carries with it the liability of a contingent loss—a feature which is absent in either kind of mortgage—it is impossible to include within the purview of Non-payment of Debt the party entitled to the profit in the case of a *kuttā*.

Inclusion within the scope of Non-delivery of Gift is, however, consistent with logic. Non-payment of Debt is founded upon a basis of the four-fold Gift. We have already seen that, 'The way of Gift is four-fold: "given", "ungiven", "givable", and "ungivable". 'Given" is itself two-fold: conditional and unconditional. If we assume the kuttā to be a conditional gift the mystery is solved: the party entitled to the profit is included in this section by virtue of the gift made to him having been conditional. When the party entitled to the profit is involved in any issue in which we are concerned with the payment of X's debts or

the due performance of divine or ancestral rites in conformity with X/s instructions the section to consult is Non-delivery of Gift.

From this passage we gather that it was a practice in our author's region and period for persons who were, no doubt, in poor health or destitute of capital, and who had no sons or grandsons (legitimate or adoptive) or sons-in-law upon whom they could depend to work their land, to maintain them, and to see to the payment of their debts, the repose of their souls and the maintenance of the necessary regular oblations to gods and ancestors, to give a part or the whole of their lands to strangers (who should not be without the necessary qualifications in point of caste) subject to an undertaking by the latter to 'see all square with them' at and after their death. Of course, such a transaction must be a speculation on the part of the donee. It is true that he is the owner of the land in all but name, but its profits cannot always be anticipated correctly. He cannot be sure in advance how deeply indebted the original owner will be at his death, even if he can make a fairly accurate estimate of the annual cost of the religious ceremonies which will encumber him. If he decides that working the land himself is not the best course to follow, and wishes to lease it to a third party, is this consistent with his tenure? Our author says almost in so many words that it is not: for although he is owner by the conditional gift, the original owner, the donor, retains so much of his ownership as will serve to prevent alienations in fraud of the stipulations and to recover (vicariously, in the person of the donor's heir) the whole property for default in performing the conditions. There are thus two owners, the property is *sāmānya*, and the tenant-in-*kuttā* (SKt. *kauttika*) cannot alienate validly even with the original owner's assent: the act must be that of the original owner himself. As for the latter, so long as the transaction is a *gift*, he cannot transfer his interest (albeit encumbered) to a third party.

The conditional gift operates at once, and the donee can draw profits from the land donated without being obliged to wait for the donor to die and for the conditions to become binding upon him. Since these encumbrances seem remote, not being in vigour at the time of the transfer, and since the size of the pecuniary burden is doubtful and, while hypothetical, fluctuating (to however little an extent), grounds certainly exist for wondering why anyone should have supposed that such a transaction was a mortgage. It is at once evident that if it were a mortgage a right of transfer might remain with the owner.

Now South India and Ceylon are familiar with a phenomenon (which may be peculiar to that part of the world) according to which the sale outright of ancestral property is so obnoxious to its owners, however impoverished they may be, that they will go to any lengths to avoid it. When they cannot work it they lease it, and since the concept of the lease seems to have just missed occurring to the Northern Indian jurists of ancient times, probably on account of the historical priority of the concept of, and the astounding proliferation of the variety of, mortgages, what we should call a lease used to be given (subject to what is said below) by way of mortgage or under the guise of a kind of mortgage. The status of mortgagor neither was, nor is, considered contemptible or deserving of pity, and when the owner exacted a premium from his tenant as a condition precedent to the

latter's occupation of the land, he was content to think of this as a debt secured by mortgage. Mortgages properly so-called were in any case almost invariably possessory. What we should call a deposit to secure regular payment of rent, or 'rent in advance', Indian jurists called a debt incurred by the owner on the security of his land, and the relationship of owner and tenant was described as that of debtor and creditor. It was natural, therefore, for the Indian lawyer of the pre-British periods to think of every tenant as a mortgagee in possession, who might retain part or the whole of the profits from his tenure in lieu of interest on the premium (or mortgage amount, according to the viewpoint), and in most cases in practice, should the tenant have stipulated (for example) to pay over half the crop to the owner year by year for a twelve-year term, the lawyer would view the tenant as a mortgagee bound to make regular additional advances to the mortgagor upon the security of the land and its yearly produce.

In the case of this *kuttā*, however, the condition subject to which the land was held was a condition which only in certain instances would be financially advantageous to the tenant. In those instances indeed he might be called *aupacayika*, 'the party entitled to the profit', and in this capacity he was indistinguishable from a mortgagee in possession whose advance upon mortgage had not been paid promtly but had been promised at and after the death of the mortgagor. Our author quite properly notices that he will be a debtor, if choice must be made from the alternatives, and certainly not a creditor. Of course that fact that the amount borrowed (assuming the donor to be a borrower) was unascertainable until the death of the borrower made no difference to the validity of the comparison. But the risk of loss did made a difference. The tenant-in-*kuttā* stood a substantial chance of not 'breaking even', especially if he had to maintain his own family out of the income from the lands. And where in fact he lost in carrying out his obligations (and he could be forced to carry them out on pain of forfeiting the estate) his similarity with a mortgagee broke down. He was in fact making one or more gifts in return for another; the land could not be a security in the ordinary sense of the word (for in taking a qualitatively unlimited interest in it at the time of the transfer he had exhausted its capacity to satisfy him); and there was no means by which the heirs of the donor could pay off the encumbrance and thus reacquire, or 'redeem', the property. His interest was in effect what we should call an absolute estate subject to a condition subsequent, an estate defeasible upon failure to perform the services stipulated for by the demisor.

The present writer would be most grateful if any reader who knows of instances of such a tenure, whether it be from ancient, medieval, or modern India or in any other part of the world, would kindly bring them to his attention.

If we had only the foregoing passage to rely upon we might be inclined to suppose that kuttā menat only a special kind of relationship between demisor and demisee, according to which the former made over the corpus of the property and the latter agreed to pay the debts and perform the relious rites required by the demisor. We should then be at a loss to account for the fact that the word kuttā appears, in various forms, in modern Indian regional languages of the Peninsula without any suggestion that the transaction referred to has

either a religious object or the satisfaction of the demisor's creditors as a normal component term. On the contrary we are obliged to explain how it is that the word, in whichever form it appears, is used to mean a lease, and apparently that kind of lease which obliges the tenant to pay in advance the rent for the season or period stipulated, or to pay at stipulated intervals an amount previously agreed upon as the value of his tenure, while retaining all the direct income of the lands (or other exculsive right demised to him) for himself, without obligation to account to the demisor, though perhaps liable for (legal) waste. It is quite extraordinary that in Sanskrit legal literature no word for 'lease' has so far been identified, and no word has been discovered in the printed *smṛtis* which could possible cover the type of transaction alluded to in the regional languages referred to above. One was ready to accept (as stated previously) that the Northern Indians, Aryans or sub-Aryans, had not inherited the concept of lease and that when it was reuqired the previously emerging concept of mortgage was made to serve all the purposes that were required. But it remained to be marvelled at that even in South India, where very substantial sections of the population have for centuries drawn their living from inferior tenures of the soil, no trace of a discussion of their legal position could be found in the *śāstric* texts. In fact the *kuttā* supplies the key, and the *Sarasvati-vilāsa* supplies the general background as well as the peculiar details set out above.

The passages are to be found at pp. 161-6 of the edition of 1927 and their unique interest, legal and lexicographical, demands their republication along with the curious passage we have just examined. They demonstrate that *kuttā*, for all its absence from the Sanskrit dictionaries, was in the sixteenth century the word for 'lease', and they outline the juristic basis of lease as then understood. They go further, and point out that the word *kuttā* was believed by the ancient commentator Bhāruci to have been used to the *smṛti*-writers Gautama and Viṣṇu, and was expounded by him. Bhāruci is believed to have been a South Indian writer, and his work (except for a commentary on Manu) has been lost for many years. It is fairly certain that his work on Manu does not include the matter which the *Sarasvati-vilāsa* copies out for us, and we are once again given cause to reflect upon the undoubted fact that the author of that work quotes more frequently than any other *dharma-nibandha* compiler from *smṛtis* which are not quoted elsewhere. The crucial texts cannot be traced. This casts some suspicion upon the genuineness not merely of the references to Bhāruci, but upon the whole discussion, since if the texts of Gautama and Viṣṇu which are relied upon are indeed spurious the technical s'āstric quality of the passage is negligible, and it will not suffice to pass the blame on to Bhāruci. On the other hand, the practical importance of such a discussion in a work specially commissioned by one of the great emperors of the eastern half of the Peninsula, a work intended for use, and doubtless gaining wide notoriety in its own day, cannot be underestimated, and it is for this reason that the present writer feels encouraged to offer an explanation (however far-fetched it may seem) for the curious fact that the discussion hangs upon texts which cannot be traced.

There is good reason to believe that Gautama's text was received in a fuller form than is now extant; the same may well have been the case with Viṣṇu. Bhāruci, whether in his

researches on Manu or in an independent work on Viṣṇu, would have had material available to him which was in many senses more antiquated than was available to the commentators and digest-writers of the twelfth century and after. His texts of Gautama and Viṣṇu may well have been pruned before transmission to later centuries, and it was always a permissible practice to eliminate *sūtras* which could not be explained in a sense agreeable to current authorities—a practice which was much more common before the *smṛtis* acquired almost superstitious authority. Bhāruci was at least eight centuries and possibly almost a millennium older than the compiler of the *Sarasvati-vilāsa*; his work was very lengthy and detailed, and such works were doomed to comparatively rapid extinction. A copy was available (?at second hand) to Vijnāneśvara (*c.* A.D. 1125), but not to Varadarāja (*C. A.D.* 1200) nor to Devaṇṇa-bhaṭṭa, the author of the smṛti-candrikā (*c.* A.D. 1250). In fact, the *sarasvati-vilāsa* is the only work which makes constant, and obviously first-hand, reference to that ancient and valuable autority.

A reason why these texts of Gautama and Viṣṇu, though present in Bhāruci, should have dropped out of their original collections may not be far to seek. It has long been suspected that Gautama was a *smṛti*-writer patronized chiefly in the South. The reference to the *kuttā* may have been inserted into his text, as doubtless other insertions were made, during the period when his text was far from settled and he was being acclimatized to the South.

Northerners, who could for long claim an exclusive right to determine the genuineness of *smṛti*-texts, could not understand what this *kuttā* was, and ejected the supposititious *sūtra*. The same may well have happened to Viṣṇu, but there an additional inducement to reject the texts was present. As we shall see, the tenant in a 'without-profits' *kuttā* was allowed the benefit of an implied term in his contract that one-quarter of the profit over and above the rent due or paid in advance belonged to the tenant.

This provision may well have been satisfactory in the ninth century A.D., when perhaps the pressure of population upon the land was much less heavy than it afterwards became, but would have been inappropriate in an age when the landlord could afford to insist that all losses should be borne by the tenant, and would exact a rack-rent, while the best that the tenant could do to protect himself was to stipulate not for a fixed rent, but for a share in the income, whatever it might turn out to be. In a tenants' market, at a period when, as we shall see Bhāruci saying, the motive behind the institution of *kuttā* was to enable the owner to obtain some income from land which he could not farm himself, it was natural that the owner, desiring to secure good farming, should say. 'Take the balance, if any, for yourself'. He might well feel inclined to approach the matter from another angle, to demand all the profits beyond a fixed amount, but to fix that amount high, and to stipulate for a generously low rent. Viṣṇu's implied term served to encourage good farming in a tenants' market, and protected owners who were in no position to stipulate for a high rent. But in a landlords' market the tenant was not able to beat down the rent stipulated for, and the possibility that he would be left with a balance after meeting his own expenses would be remote. If then the law demanded that three-quarters of the net income also should be handed to the

landlord, the economic rent would become almost impossible to fix, since it would be a pure speculation what the tenant's quarter might amount to. Hence, the offending parts of the *smṛti* if not capable of being interpreted into innocuity, suggested their own deletion.

At pp. 161-2 the *Sarasvati-vilāsa* was discussing the effect of an *āsedha*, a word which is often transalated 'arrest', but which also means 'attachment' (pending trial of an action), and had been commenting upon the question as to the proper reading of a text of Nārada on the function of this process, when reference to the *kuttā* in quite general terms is found:

ato Bhāruci-vyākhyānam eva samyak, Viṣṇu-vacanānurodhitvāt, nanv evam ayuktam, Viṣṇu-vacanānurodhābhāvat; tathā ca Viṣṇuḥ 'āseddhuḥ phalam evāsedhya' iti—maivam, bhavatā Vaiṣṇava-vacana tātparyāparijnānāt. tat-tātparyan tu likhitāsedhāt phalāsedhanaṃ balavat, sarveṣāṃ phalārtham eva pravṛtteh, phalāsedha-karaṇe tat-pūrva-kṛtā likhitādyāsedhā aproayojakā eveti tat-prābalya-jnāpanārthatvāt tad-vacanasya iti, tathā ca Gautama-sūtraṃ 'phalāsedhaḥ kauttika-vat' iti, tasyārtho vivrto nibandha-kārena—atra dvitiyārthe vatish; kauttikaḥ *kuttā-jivikaḥ, yathā āsedha-viṣayaḥ, evaṃ sarvatra phalam evāsedha-viṣaya iti, yathā kauttikaḥ kuttā-kāreṇa gṛhita-vyavahāreṣu phala-svikāra-daśedhaḥ kartavya iti. phala-svikāra-daśyāṃ phalam evāsedhyam, na sva-rūpam iti tātparyam, kauttika-grahaṇan tu kuttā-viṣaye itara-vyavahāra-vat pūrva-kālāsedhā na santi, kintu kuttāyāṃ phalam evāsedha-viṣaya iti tāvan-mātra-viśeṣa-jnāpanārtham ity avagantavyam.*

This may be translated as follows:

Hence the explanation of Bhāruci is correct, since it is conformable to the text of Viṣṇu. If you reply that this solution is unsatisfactory, since it does not actually conform to Viṣṇu's text, and because what Viṣṇu says is, 'The income alone belongs to the attaching party after his attachment', I must disagree: for you have not really grasped the meaning of Viṣṇu's text. Its meaning is, on the contrary, that an attachment of the income takes precedence over an attachment by written notice. Naturally, since all such proceedings are instiuted with the object of obtaining access to the profits. In other words, the purpose of the text is to inform us that where there has been an attachment of the income prior attachments by writen notice or by other methods are quite useless, on account of the greater efficacy of the former method. And Gautama's *sūtra*, 'Attachment of income occurs as in the case of a *kauttika*', is on the same point. The author of the Digest has explained its meaning as follows: 'Here the ending vat ("as") is to be understood in the accusative sense. Kauttika means a tenant-in-*kuttā*, that is to say one who may be the object of an attachment. Thus in all cases it is the income which is the object of attachment. For example, a tenant-in-*kuttā* may be subjected to attachment by way of interception of assets accruing over and above the amount stipulated for in the terms he accepted with his tenure. Similarly in every sort of litigation attachment is to be made by way of interception of the income'. The expression 'by way of interception of the income' implies that income alone is to be attached and not the actual corpus itself. But the expression *kauttika* is to be understood as brought in to convey this distinction alone, namely that in the case of a *kuttā* there can be no prior attachments, as would be possible in other types of litigation, but in respect of a *kuttā* nothing can be the object of attachment but the income.

Although this passage does not tell us more about the meaning of the *kuttā* than we know already (from the passage dealing with the question whether *kuttā* is a mortgage or a gift), it was perfectly rational to explain that where a tenant does not own the corpus, and becomes the defendant in an action, whether brought by his landlord or a stranger, the latter cannot obtain an attachment of anything beyond such portion of the income as is left over when the landlord's rights are satisfied. In our *kuttā* for payment of debts and performance of reglious rites, the part of the income available for attachment will be that over and above the cost of those two quasi-charges upon the property. Much more light on the central concept of *kuttā* is available from a passage on pp. 163-6, where the compiler digresses into a discussion on a *kuttā*-deed as a document of title, and its evidential value:

Kuttā-lekha-bala-vicāraḥ, nanu likhitādīnāṃ prāmāṇyam āgama-nirūpaṇa-dvārā, āgamābhāve tat-prāmāṇyaṃ pras'ithila-mūlatayā dṛḍhan na bhavati, āgamās tu keṣāncin mate sapta, tathā ca smṛtiḥ 'sapta vittāgamā dharmyā' iti, Gautamādīnāṃ mate tu riktha-kraya-saṃvibhāga-parigrahādhigama-pratigraha-nirveśādayo 'ṣṭa-vittāgamā iti. Bhāradvāja-mate tu parivṛtter api vittāgama-rūpatayā nigaditatvāt tayā sārdhan nava-vittāgamāḥ, eteṣāṃ madhye kuttākāra-kārita-paribhāṣitārthasyāpariganaṇād āgama-prakāra-nirūpaṇās'aktau kuttā-lekh-asya tad-ārūḍha-sākṣiṇān ca daurbalyaṃ prāptam, 'anāgaman tu yo bhunkte bahūny abda-śatāny api, cora-daṇḍena taṃ pāpan daṇḍayet pṛthivi-patiḥ' iti smṛteḥ, āgama-śūnyāyā bhukteḥ pramāṇa-koṭi-nives'ābhāvaḥ pratiyate, yat tu bhogāgamayoḥ sāmyaṃ Bṛhaspati-vacanāt pratiyate: tat tu kevala-bhukter daurbalya-jnāpana-paratayā na viruddham, tathā ca Bṛhaspatiḥ: 'bhuktyā kevalayā naiva bhūmi-siddhim avāpnuyāt, āgamenāpi s'uddhena dvābhyāṃ siddhim avāpnuyāt'. tathā ca Vyāsaḥ 'sāgamo dirgha-kālas' ca niscchidro 'nyaravojjhitaḥ pratyarthi-sannidhānas' ca pancāngo bhoga iṣyate' iti, atra 'pancāngo bhoga iṣyata' iti vadann ekānga-vaikalye 'py aprāmāṇyaṃ bhogasyeti dars'ayatity uktaṃ prāk. atas' cāgama-nirūpaṇe tad-abhāva-pratiteḥ mūla-śuddhy-abhāvāt tad-gamaka-pramāṇa-dārḍhyābhāva iti.

atrocyate, kvacit paribhāṣā api vittāgama eva, yathā 'ādhiḥ praṇaśyed dviguṇe dhane yadi na mokṣyate' ity atra dharn-dvaiguṇya-nibandhana-paribhāṣā vittāgama-madhye 'pariganitā' pi sopādhikaṃ svatvam avagamayatiti Vijnāneś-varaḥ. Candrikā-kāras tu dhana-dvaiguṇya-paribhāṣā parivṛtti-rūpeṇa tila-vrihi-vinimayavat svatvāpādakety āha. Vijnānes'vara-matāvalambanena paribhāṣāyā vācika-dānāntargatatayā svatvāpādakatvam asti, aupādhika-sthale 'py upādhi-nivṛttau svatvasya dṛḍhatvāt tathā hi kṣetrādes tasmād etāvad dhanam asmabhyan diyatām avas'iṣṭan gṛhyatām iti paribhāṣāyām avaśiṣṭa-dravye svatva-nivṛttiḥ para-svatvāpatti-paryantā bhavaty eveti dṛśyate, athavā Bhāruci-matāvalambanena kuttākāra-kārita-paribhāṣāvaṣṭambhita-mānasika-dānāntatayā svatvāpādckatvaṃ paribhāṣāyās samasti.

nanu sankalpa-mātrāt svatvan notpadyat, kin tu sankalpāt svatvam apaiti. svatvotpattis tv arjanād eveti dhanārjana-naya-siddhatvāt tad-vyākopo mānasika-dānāntatayā paribhāṣāyās svatva-hetutvoktāv iti cet, mainvam, yadi dhanārjana-nayas svatvāpāya-hetu-mānasika-kriyaiveti syāt tadā 'yan doṣaḥ prāduṣyāt, na ca tathā svatvāpāya-hetuḥ kvacit sankalpaḥ kvacin mahātakādir ity uktam. ataś ca tasyāpy adhikaraṇasya laukika-vyavahārānurodhitayā svatvasyāpi laukikatvāc ca tasyāpy adhikaraṇasya laukika-vyavahārānurodhitayā svatvasyāpi laukikatvāc ca yathā loke dṛṣṭan tathā svikartavyam, kuttādi-vyavahāre mānasiki kriyaiva svatva-hetur iti saṃmataṃ laukikānām, tathā ca dṛśyate, bahuśo bahavaḥ Kāyasthāḥ kṣetrādikan deśa-grāmādikaṃ vā kuttā-kāreṇa gṛhṇantaḥ

pākṣikā-pacaya-bhāra-sahiṣṇavo dṛs'yante, tatra grāmādi-kṣetrādi-deśādy-upacita-pāribhā-ṣika-dravye teṣāṃ vyavahāriṇāṃ svāmyaṃ vidyata eva, sa cāgamas sādhiyān eva. nanu kuttā-kāreṇa gṛhita-dravye upacayo vidyate cet tam upacayan kuttā-pradātāra uttama-padābhilapyās svikurvanti paridṛśyante ca, maivam, yadi kauttikas tv apacaya-bhāra-sahiṣṇur na bhavet tadā 'py uttamasyāpy upacapyā-pāya-sahiṣṇutvan na syāt, kauttikatva-prasiddhir yā' varuddha-bhoga-pradānān-yathā-karaṇa-mūlā, ata evoktaṃ Viṣṇunā 'kauttiko 'pacaya-bhāra-sahiṣṇur uttamas tūpacayāpāya-sahiṣṇur' iti, atra Bhārucih: kuttopajivi kauttikah; kuttā-pradātottamḥ; kuttā-nāma gṛha-kṣetrārāma-grāma-deśādi-padārtha-samṛddha-phala-prāpty-arthaṃ yasmai-kasmaicid vyavahāriṇe tad-gṛhādi-padārtha-jāta-sandānam iti. sandānan nāma samyag-dānan na bhavati aupādhika-dāna-rupatvāt kuttāyāḥ, api tụ sandānaṃ bandhanam, uttamasyāpy upacayā-nangi-kāreṇa kauttika eva bandhana-rupatvāt, sandānan kuttety upacaryate, sandānan nāma tyāga-mātram iti kecit, atrāyaṃ vis'eah: yady anayoḥ kautti-kottamayor vādyate samayaḥ 'upacayas' cen mayottamena soḍhavyaḥ apacayas' cet tvayā kauttikena sod+havya' iti, tadā saṃvid-anusaraṇe upacaye vidyamāne 'pi Viṣṇu-vacanānusāreṇa pāda-nātropacaya eva svāmyam' iti, atra Bhārucih: so 'yam upacayaḥ kuttātaḥ; pāda-mātran cet tasminn evopacaye uttama-manasā iman upacayan kauttiko gṛhṇita, anyadā āya-nāśayos svāmy-adhinatvam, na tu kauttikasya; pādādhikya eva svāmyāt tasyeti smarati. tatā tasmin pāda-mātropa-cita-dravye uttamasya svatva-nivṛttiḥ parasvatvāpatti-paryantā bhavatiti tātparyam iti, ayam āśayah: mānasikam api dānan tyāgatmakaṃ svatvāpādakam iti Vaiṣṇavaṃ matam iti, uttama-manasā 'yaṃ kauttika imam upacayan gṛhṇātv iti vadatā Bhārucinā yāvaty upacite drvye uttamasya mānasika-tyāgaḥ tāvaty api svatvaṃ Vaisnavaṃ pādam iti matam, tato nyunena na bhavitavyam iti, atra kecid āhuḥ: anenaiva nyāyena kuttāyāḥ apacaye vidyamāne 'pi pāda-mātram uttamena soḍhavyam, tato nyūnan dūrata eva, tatrādhikam aicchikam iti Viṣṇu-vacanasya tātparyārtha iti.

This may be translated as follows:

A discussion of the value of a deed of *kuttā*. You may well point out that the evidential value of deeds and other documents is derived from their capacity to declare title. In the absence of title the evidential character of such material is open to challenge, for its very foundation is of the weakest. Now according to many authorities titles are no more than seven in all. A *smṛti* tells us, 'Seven acquisitions of wealth are consistent with *dharma*'. On the other hand, Gautama and others believe that there are eight 'acquisitions of wealth' namely inheritance, purchase, partition, garnering, finding, acceptance, wages, and so on. Yet Bhāradvāja believes that since even exchange has been pronounced to be a type of 'acquisition of wealth' we must include it, and so we have nine 'acquisitions of wealth'. The subject-matter of the terms stipulated by way of a *kuttā* is not enumerated amongst these nine, whence it appears that a deed of kuttā cannot possibly declare a kind of title, and we are faced with the fact that neither it nor any oral evidence depending from it can be of the least validity! Moreover, a *smṛti* says, 'The king should punish with the punishment appropriate to a thief one who enjoys an object without title, even if he is able to point to possession for many centuries'; and thus we know that pssession devoid of title is not included among the alternative permissible types of evidence of title. As for the text of Bṛahaspati which gives us to understand that possession and title amount to the same thing, it does not contradict the point raised, since its intention is to inform us of the invalidity of bare possession. Bṛhaspati says in fact, 'One may never attain certainty of

tenure of land by possession unaided; one may attain certainty by both, if his title is clear'. And to the same effect Vyāsa says, 'Possession prevails if it be five-fold: accompanied by title, of long duration, uninterrupted, free from the adverse claim of others, and in the presence of the opposite party'. And it has already been shown that, by the use of the expression, 'possession prevails if it be five-fold', he explains that if possession be short in respect of even one of those qualifications it has no evidential value. Consequently, when it is proposed to declare a title, and the fundamental contention is open to question by reason of our knowing that such a title is non-existent, there can be no validity in evidence tending to prove such a contention. Such might be my objector's argument.

But my answer is as follows. There are occasions where a contractual term amounts to an'acquisition of wealth', as for example in the text, 'A mortgage may perish if it be not redeemed with the double amount', where, although the legal term charging the land with double the mortgage-amount is not enumerated among the 'acquisitions of wealth', Vijnāneśvara tells us that we are to infer a conditional property. On the other hand, the author of the Candrikā has said that the legal term of the doubled amount is a means of creating Property because it is a variety of exchange, like an exchange of sesamum for rice. If we rely upon Vijnāanes'vara's view, the legal term is a means of creating Property because it is an example of an oral gift. For in a case of a conditional transfer Property is validly effected upon the performance of the condition. So in examples like, 'You must give me out of this field (etc.) such-and-such an amount, and the balance you may keep for yourself', or, 'You may take such-and-such goods and pay this debt, and the balance you may keep for yourself', it is evident that there is a cessation of Property persisting up to the production of another's Property. Alternatively, relying upon Bhāruci's opinion, the contractual term does indeed possess the capacity to create property since it ends with a mental gift dependent upon the term stipulated for by way of the *kuttā*.

You may object that by intention alone Property is not produced, whereas by intention Property ceases. The principle of acquisition of assets is established in the terms, 'Only by means of acquisition does Property come about', and accordingly this rule would be contradicted if we were to declare the legal term we have been discussing a cause of Property on the ground of its culminating in a mental gift. But this is not true. It has been pointed out that if the method of acquiring assets were merely the mental act causing the cessation of Property that difficulty would be greatly weakened, and it would not be the case that a cause of the cessation of Property might be seen at one time in an intention to dedicate, for example, and at another in the commission of a grave sin and the like. And so, since even this chapter of the law observes conformity with the world of practical affairs, and since even Property has a purely practical character, what is observed in practice must be accepted by the jurists. That in a transaction such as the *kuttā* the very mental act alone is a cause of property is agreed amongst all students of practical affairs. And this is what is actually observed. Very frequently a great number of Kāyasthas accept fields and so on, or a District, a village and so on, by way of *kuttā*, and are observed to bear the risk of a contingent loss. In such cases no one doubts but that there is Ownership on the part of these businessmen in any profit accruing to them from the village, field, District, or whatever it may be, so far

as is covered by the legal term in question. And this title is beyond dispute. You might reply that if in the property taken by virtue of the *kuttā* a profit results, the demisors-in-*kuttā*, who are known by the name *uttama*, appropriate the profit to themselves and are commonly observed to do so. But you are wrong. If the *kauttika* were not willing to undertake the risk of a loss, the *uttama* would certainly not undertake the risk of a diminution of the profit. If anything is established about the status of a *kauttika* it is that it is founded upon an exact compliance with the mode of transfer of a strictly limited possessory right. It is for this reason that Viṣṇu says, 'The *kauttika* is liable to suffer the loss, while the *uttama* is liable to suffer a diminution of the profit'. Here Bhāruci explains, 'One who lives on a *kuttā* is a *kauttika*; the demisor-in-kuttā is the uttama; the word *kuttā* refers to the *sandāna* to any second party of the items consisting of the demisor's house, field, garden, village, District, and so on for the purpose of realizing the whole income therefrom'. The word *sandāna* does not equal *samyag dāna* ('a full and entire gift'), since the *kuttā* has the quality of a conditional gift, but means 'binding'. For the *kuttā* has the character of a 'binding', at any rate from the point of view of the *kauttika*, in that the *uttama* does not acquire the profit. Binding' is used metaphorically for the *kuttā* itself. There are some, however, who take *sandāna* here to mean no more than 'relinquishment'.

But the following distinction should be observed: if the agreement between the two parties, namely the *kauttika* and the *uttama*, is this: 'If there be any profit it is to be taken by me, the *uttama*; but if there be a loss it must be brone by you, the *kauttika*'; then should there be a profit after the terms of the contract have been performed, the *kauttika* actually has Ownership in not more than one-quarter of the profit, in accordance with a text of Viṣṇu. Viṣṇu says, in fact, 'The *kauttika* has Ownership in the profit only to the extent of one-quarter'. Bhāruci comments: 'The purport of the *smṛti* is this: the profit referred to here is that realized from the *kuttā*; if this amounts to no more than a quarter the *kauttika*, by virtue of the *uttama's* intention, may take this "profit" in that prfit; but as to other circumstances both profit and loss would accrue to the Owner, and not to the *kauttika*; for as to the excess above the quarter the Owner has the ownership. The meaning is that in such cases there is a cessation of the Property of the *Uttama* persisting up to the creation of the Property of another in respect of the goods which represent the profit of not more than a quarter'. What this amounts to is that according to Viṣṇu's opinion even a mental gift has the character of a relinquishment any may produce Property. When Bhāruci says that according to the *uttama's* intention this *kauttika* may take this profit, his opinion appears to be that Viṣṇu's 'quarter' is the Property arising in so much of the goods representing a profit as the mental relinquishment by the *uttama* covers. Consequently we are to understand that it cannot arise in less than a quarter. Some object that according to this reasoning if the kuttā produces a loss, a burden not exceeding a quarter of it ought to be borne by the *uttama*. Consequently the full meaning of the text of Viṣṇu, they say, is that while a falling-short is totally excluded an excess is optional.

From these fragments, introduced into the work in different places and with totally different motives, we are able to piece together the basic concept of the *kuttā*. The owner most commonly offers to a stranger the right to work a piece of land (or some other source

of income) and to keep all the income for himself, and the stranger argees to pay the owner a premium, which he has carefully calculated by appraising the probable productivity of the source in advance, as a consideration for the exclusive right in question. The period might be as long as a season, or indefinite subject to an implied right to novate the agreement should conditions alter markedly. When the premium demanded is very high, or if its payment is deferred and its amount is not capable of exact computation, the possibility of the tenant's suffering a loss is worthy of consideration. If the premium is low, as might have been frequently the case in early times, a large net profit to the tenant might be regarded as inequitable and *extra contractum*. Thus, the owner was legally entitled to claim, in the first situation that he was exempt from liability to repay any part of the premium or to suffer a reduction in the amount of the unpaid premium if any; and in the second situation that three-quarters of the net profit (or according to Bhāruci the gross profit) was due to him over and above the premium. In this way the owner was amply protected. The tenant's rights in the *kuttā* were confined to the profits. If the agreement said nothing about profits, they were all his; if the agreement said that the owner was to have all the profits, the latter could demand no more than three-quarters of them (however calculated). But if the year was bad, or the sub-tenants (if any) obdurate, or for some other reason the tenant was unable to recoup his initial outlay by way of premium, should undertake a liability to bear a quarter of the loss. To this view the *Sarasvati-vilāsa* lends what is plainy somewhat qualified support, commenting that whereas the tenant can be sure of keeping a quarter but not less than a quarter, of any profit he makes, he may be able to call upon the owner to assist him to the extent of a quarter in the event of a loss, and the owner has an option to assist him still further, as Viṣṇu's text might suggest, just as he has an option to allow him to retain more than a quarter of the net profits, if any.

The first passage dealt with a peculiar type of demise for payment of debts and religious duties; the last very plainly deals primarily with governement revenue-farming contracts. Yet it is clear that the same features of absence of Ownership in the tenants, the restriction of their rights to the income pending the non-performance of the conditions, and the speculative character of the undertaking, are present both in these and in the intermediate specimens which approach a moder farming-lease (where, however, legal relief against loss is not available to the tenant).

It seems that a case could be made out for a greater juristic maturity in the sixteenth century amongst the South Indians, than amongst their Northern colleagues, who not only do not know of the kuttā but also fail to tell us what are the essentials of any sort of lease, though they must have been familiar with many of them.

KASYAPA : ETHNO-GEOGRAPHICAL DATA

The Kasyapa Samhitā or Vrddha-Jivaka-Tantra is a medical treatise, chiefly devoted to diseases etc., of children (Kaumarabhrtyam Section of the Ayurveda). The treatise, in its present form, is not later than c. 300 A.D., and incorporates in it, earher portions and traditions of the original work of Vrddha-Jivaka, who, if he is the same as Vaidya Jivaka, the contemporary of Buddha, can be assigned to c. 5th century B.C.

That the original author of the Kasyapa Samhita must be Jivaka, the contemporary of Buddha, is supported by the fact that he is known as "Kumara-bhicca" in Buddhist tradition. He was so called because he was reputed as an authority on the "Kaumarbhrtyam" Section of Ayurveda. And we know that the available Kasyapa Samhita is a work on this very section. We should, therefore, have no difficulty in identifying the author of the Kasyapa Samhita.

The text was re-edited by one *Vatsya* who says that he obtained it by the grace of *Anayasa Yaksa* (vide, Kasyapa Samhita, p. I9I). Obviously this is a reference to Anayasa Yaksa, the City-God of Kausambi in the Vatsa country referred to by the Buddhist text Mahamayuri and supports the conclusion that the text handed down to us dates from c. 3rd century A.D.

Age of the Kasyapa Samhita has been discussed by Pandit Hemaraja Sharma who places Jivaka, the original author, in a much earher age. But Shri Durgashankar Shastri seems to be right in identifying this Jivaka with Buddha's contemporary of the same name.

Kasyapa Samhita is full of interesting *data* ; some tantric evidence *e.g.* the reference to Matangi Vidya, etc., was discussed earher by me in IHQ. Vol. XXIX, No. 3, September 1953, pp. 260 ff., while the reference to Toys in the same work has been discussed in the Journal of the M. S. University of Baroda, Vol. V, No. I (March, 1956), pp. I-5. The references in Kas. Sam. to Bala-grahas and the origin of Sasthi, etc. have been discussed by this writer in a paper on Harinegamesin in the Journal of Indian Society of Oriental Arts, Vol. *XIX*, for *1952-53* (published in 1957), pp. 19-41. The text contains some interesting geographical data which is discussed below.

There is a section containing references to different countries and the dietary habits of the people in those countries. Unfortunately the text of K. S. is not fully recovered, the MS. is incomplete and of the *Desa-Satmyadhyaya*, which is chapter 25th in the *Khilasthana* of the K. S., only 14 verses are preserved. The physician must know the diet of the people of different lands before he begins their treatment, since without a knowledge of these facts *cikitsa* cannot be started. A question is put to *Bhagavan Kasyapa* about these facts and Kasyapa first takes up Central and Eastern countries and begins with the Kuruksetra.

Now, according to the printed text of the Kasyapa Samhita, quoted above, *Kuruksetra* is one hundred yojanas from Madhyadesa (verses 4-5). People living in the Madhyadesa enjoy taking (diet containing) all the six Rasas or flavours (katu, amla, tikta, etc.). They are fond of eating, more than-once, and partake of *bhaksya* (fruits etc. which can be cut with teeth, *lehya* preparations etc.), *bhojya (light* diet, breakfast etc. which is not a full meal) and *anna* (cooked food, meat etc.)

Kuruksetra, according to the text as it is printed, is thus outside Madhyadesa. Now the *Kuru* was known to Panini (IV. 1.172) as a janapada and a kingdom. He also mentions Hastinapur (VI. 2, 101) which was its capital. As Dr. Agrawala writes, "The region between the triangle of Thanesvar, Hisar, and Hastinapur was distinguished by three different names. *Kuruksetra* proper between the Ganga and Yamuna with its capital at Hastinapur,

Kurujangala equal to Rohtak, Hansi and Hissar, and *Kuruksetra* to the north with its centre at Thaneswar, Kaithal, Karnal. The Kasika mentions all the three as geographical units............". Madhyadesa is described in the Dharmasutras of Baudhayana as lying to the east of the region where the river Sarasvati vanishes to the west of Kalakavana, (a tract somewhere near Prayaga), to the north of Pariyatra and to the south of the Himalayas. Manu defines it as extending from the Himalayas in the north to the Vindhyadesa in the south and from Vinasana in the west to Prayaga in the east. Thus Kuruksetra should be a part of Aryavarta or Madhadesa and not outside it. I would like to emend the reading of v. 5b as *Kuruksetram Madhyadese yojananam satatrayam.*

The Purvadesa or Eastern India (India to the east of this Madhyadesa) includes according to K. S., Kumara-vartani, Kativarsa, Magadha, the great rastra known as Rsabhadvipa (sumaharastram-rsabhadvipam), Paundravardhanaka, Mrttikavardhamana, Kavata (Karvata according to Pt. Hemaraja Sharma, Intro. p. 137), Matanga, Tamralipta, Ciraka (emended as Cinaka by Pandit Sharma, ibidem), Priyangu, Kausalya (Kosala), Kalinga and Prsthapuraka. (*Kalinga-Prsthapurakam-vv.* 7-9). People of these lands (generally) have enlarged spleens (*plihavino martyah),* and scrofulous glands *(galagandikam).* Their usual diet is treackle *(guda)* and cooked-rice *(salyodana)* and they enjoy fish-diet. They generally like sweet and tasteful *(madhura)* dishes and hence their constitution has a tendency to diseases produced by *vata* and *pitta.* For them should be prescribed *(as puthya bhojana)* a diet which is bitter and pungent to taste and which is free from fat. Whatever else moves cough should be prescribed to them.

The Purvadesa is pleasing and cold *(madhurah sitalo)* and the climate is such as would make food heavy to digest *(guruh).*

Verses 12ff. seem to refer to the Southern lands but the text is corrupt. Before passing to these verses, we might consider the Eastern lands mentioned above.

Kumaravartani : A Kumara-desa is mentioned in Mahabharata, Sabhaparvan, adhyaya, 29. Pandit Hemaraja Sharma in his Introduction to the K.S. places Kumara-desa near the old Reva state.

Ptolemy refers to the five mouths of the Ganges, namely, "the Kambyson mouth, the most western, the second mouth called Mega; the third mouth called Kamberikhon, the fourth styled Pseudostomon ; and the fifth mouth Antobole....The Kamberikhon is said to represent Kobacdak or Kabadak (Kapotaksa), the "Cobbaduck" of Rennell's map, which flows past Jhinkaragaccha. A more plausible explanation would be with Kumara (Kumaraka) river which issues out of Matabhanga branch of the Padma and joining the Gorai, ultimately empties itself into the Haringhata estuary and the Arialkhan." B.C. Law identifies Kumari river with modern Kumari which waters Dalma district in Manbhum.

A Kumara-mandala was included in the Samatata—Padmavati-visaya of the Pundravardhana-bhukti. This mandala is known from a record of Candra kings (Edilpur Copper plates of Sri-Candra, *Dacca Review,* Oct., 1912 and *Epigraphia Indica,* XVII. 189 ff.). R. C. Majumdar writes: "the name of the *mandala* is perhaps connected with the river

Kumara, and still preserved in Kumarakhali, in Faridpur district, not far from the old bed of the river Padma."

Nand Lal Dey identifies Kumaravana with the Kumaun district of the Himalayas. Moti Chandra identifies Kumaravisaya of Mahabharata, II. 23.71 with Gazia and Balia districts of the Uttara Pradesh, the Chan-Chu of Hiuen-Tsang.

Since the author begins with Kumaravartani (amongst Eastern lands), it is just possible that he referred to a region nearer Madhyadesa. In that case Moti Chandra's identification would be more likely.

In MBH. Cr. Ed. II. 27.1, King Srenimat of Kumara (v. 1. Kulinda, Kuninda, Pulinda) is mentioned in the east (north-west according R. Shafer's suggestion), along with Gupalakaksa, Malla, etc.

If order is disregarded by the author of the K. S., then, Kumaravartani may either be Kumarakhali in Nadia district of Bengal (Imperial Gazetteer, Vol. xvi. 18) or Kumarahata, ancient town, now known as Halisahar, in Bar-rackpore sub-divison of 24 paraganas, Bengal, situated on the east bank of the Hooghly (Imp. Gaz., xiii. p. 11). The Mahabharata references would however suggest a Kumara-desa, more westward, somewhere in U. P. or Bihar.

Kativarsa—It seems to be the same as Kotivarsa and Kativarsa may be a scribal error. "Kotivarsa-visaya is known to Gupta Inscriptions. The city from which it derives its name is referred to in the Vayupurana. The Jaina Prajnapana-sutra places it in the Radha (Ladha). But the Gupta and Pala inscriptions invariably include it within the Pundra(Paundra) vardhana-bhukti. The head-quarters of the visaya have been identified with the mediaeval Diw-kot (Devakot or Devikot)". It may, however, be noted that in the K. S. Kativarsa is not included in Paundravardhanakam.

Pandit Hemaraja Sharma identified Kativarsa with modern Katwa in Burdwan. The capital of Kotivarsa is now generally identified with Kotikapara or ancient Devakota though the boundary of the Kativarsa of the K. S. might have been bigger than in the Gupta or Pala or Sena times. The Mahamayuri list (line 62) refers to Yaksa Mahasena at Kotivarsa. *Magadha* of course is well-known. It is indeed surprising to find Magadha placed between Kativarsa and Rsabhadvipa, all the three enumerated after Kumara-vartani. The expression, in the printed text of K. S., is—

Magadhasumaharastramrsabhadvipameva ca.

Does this refer to some eastern part of Magadha known as Maharastra (*Magadhasumaharastram)* ? If that is so, can Rastra be identified with (or emended as) Radha (Ladha) ?

If this line is emended as-*Magadha-Suhma-Radham ca Rsabhadvipameva ca,* then the meaning would be more clear. Ancient Radha included Suhma and Gauda, all making Western Bengal. Kodivarisa was also a part of Radha or Ladha according to Jaina traditions. We may, therefore, also suggest emendation as *Suhma-rastram,* the kingdom or country known as Suhma.

Subbabhumi of Jaina texts seems to be identical with the country of the Suhmas. "The Suhma country was a portion of the more comprehenxive region which was later known as Radha.....According to the Epic and Puranic accounts the Suhma country is distinguished from Vanga and Pundra. The account of Bhima's eastern conquests in the MBH., makes the country of suhmas distinct from Vanga and Tamralipta." Nilkantha's coum. on MBH. ii. 30.16 shows that Suhma and Radha were synonymous terms.

Rsabhadvipa is puzzling. Pandit H. Sharma has noted the reference to Rsabha in MBH., Vanaparva, adh. 85 and has also shown that Brhatsamhita refers to Rsabha in the south which is identified by some with the Rsabha-Parvata near Madura (Intro. to K.S. p. 137). But as shown by Pandit Sharma, our author refers to some other Rsabhadvipa which must be in the East. The Rsabhavipa may be one of the islands in the Bay of Bengal near Noakhali.

Paundravardhanaka : It is referred to in MBH. II. 48. 15 in the account of Bhima's conquests. Having killed the king of Modagiri (Monghyr) he fell on the mighty lord of the Pundras as well as the potentate who ruled on the banks of the river Kosi. Having defeated them the attacked the king of the Vangas. Next he reduced to subjection the lord of the *Tamralipta* (modern Tamluk in the Midnapur district) and *Karvata*, apparently a neighbouring place, as well as the rulers of the Suhmas (in the present Hooghly district), those who lived in maritime regions, and all the hordes of outlandish barbarians. Then he advanced to the Lauhitya (Brahmaputra). Pundravardhana-bhukti is mentioned in Gupta inscriptions ranging from years 124 to 224, that is, from 444 to 544 A.D. In the records of the Pala-Sena age it is variously styled Pundra or Paundra- vardhana or simply Pundrabhukti. It seems to have been the biggest administrative division or province of the Gauda empire. It extended from the summit of the Himalayas in the north of Khadi in the Sundarban region in the South. The Bhagirathi separated it from the Vardhamana-bhukti in the West. It is referred to in the Mahamayuri list as Paundra, in the Ait. Brah, as Pundra amonst the frontier tribes of India, at the very limits of Aryan India with Andhras and Sabaras. Manu names them side by side with Udra or Orissa. Varahamihira (Br. Ja. xiv. 7) classes together the Paundras and the Utkalas.

Mrthikavardhamanaka : "Vardhamanaka is mentioned in the Mallasarul plate of the 6th Cent. A.D., the Idra Grant of the 10th century and the Naihati and the Govindapur Grants of the 12th Century. It embraced the valley of the Damodar river and is known to have included the Uttara-Radha and Danda-bhukti-mandalas......It is doubtful if it covered an equally extensive area as early as the 6th century A.D. Varahamihira distinguishes it not only from Tamraliptaka (in Midnapore), but also from Gaudaka (possibly corresponding to Murshidabad and parts of Burdwan, Birbhum and Malda districts). Towards the east, the bhukti extended so far as the western branch of the Ganges, now known as the Hooghly." The Markandeyapurana, Vetalapancavimsati, etc. place it north of the Vindhyas, and in the Devipurana, adh. 46, Vardhamana is placed near Vanga. Modern Burdwan equated with Vardhamana may be taken to have been the core of the ancient Vardhamanaka whose boundary might have changed in different periods. More interesting, however, is the prefix *mrttika* attached to *Vardhamanakam* in our text. Such an appellation is not known for

Vardhamana from any source. Does Mrttika denote modern Medinipur district (Mrttika = clay or earth, Medini = earth) ? Vardhamanaka, of course, is the modern Burdwan district.

In the conquests of Karna, in Mahabharata, Cr. Ed., III. 241, 42-46, Mrttikavati is mentioned in the middle east and north of Ganges, after Mithila, Magadha, Karakhanda, Vatsabhumi, and Kevala (Mekala?), followed by Modana, Pattana, Tripuri and Kosala, see, Shafer's Ethnography of Ancient India, pp. 83-84.

Mrttika associated with Vardhamanaka in our text must Rangamati an ancient town in the Berhampore subdivision of Murshidabad district, on the right banks of the Bhagirathi.

Karvata: The mention of Karvata is noteworthy. We find it in MBH. II. 30 in the account of Bhima's conquests, in the east, and seems to have been placed adjoining Tamralipta, between the latter and Suhma. Dr. H. C. Raychaudhuri notes, "It is tempting to identify the Karvatas with the Kharwars of Midnapore and other districts of Western Bengal (Hunter, III. 49.51 etc.)." The Brhatsamhita also refers to Karvata. According to Shafer, the Karvata would be between Tamraliptaka and Vanga on E. and Sumha on W. or perhaps within Sumha."

Matanga : As noted by Pt. Sharma (Intro. to K.S.), the Yuktikalpataru places Matangadesa to the S.E. of Kamarupa, and is said to be noteworthy for mines of gems. These may be Sino-Tibetans. Shafer has shown that—n is particularly common as a final in Sino-Tibetan languages. He has further argued that the names Anga, Vanga, and Kalinga also Ganga, suggest Sino-Tibetan origins.

Tamralipta: This has been discussed by many scholars and identified with modern Tamluk in the Midnapur district. It was a port on the Bay of Bengal. Dr. Motichandra has discussed at length the various references to it, in his Upayanaparva, p. III. Also see, B. C. Law, Historical Geography of Ancient India, p. 263. Recent excavations at Tamluk have brought to light beautiful terracottas and other antiquities, some of which no doubt bear testimony to the commercial relations between Egypt and the Indian port of Tamalitti (J. Ph. Vogel, Notes on Ptolemy, B.S.O.A.S. XIV, Pt. I, p. 82).

Ciraka (Cinaka): Pandit Hemaraja Sharma corrects this as Cinaka on the ground that our text mentions a Cirarajya in the South in V, 13 and that a scribal error is likely. Pandit Sharma is inclined to regard Burma as the country denoted by Cinaka. He lays stress on the diminitive "ka" applied to Cina, thus showing smaller China. Since the text here talks of Eastern lands, the identification is not quite impossible. The Mahamayuri list refers to the eldest son of Pancika as the Yaksa of Cinabhumis. It would then seem that our text refers to a territory of China on the eastern or north-eastern borders of India.

A better identification would be with *Churns* or *Cheros* whose petty states are known in the Khasi hills of Assam (Imp. Gaz. vol. X. p. 194). The name Cherrapunji in the Khasi Hills is reminiscent of the Cheros or Cherus in this region. They moved in later ages to Uttara-Pradesh, Magadha, and Chhota-Nagpur and are still in Korea in old Central Provinces, Palamau, Shahbad, Surguja, Ballia, Mirzapur etc. (Imp. Gaz., XV. 400 ; XIX. 337-339 ; XXII. 188; XXIII. 172 ; VI. 251; XVII. 368).

Priyangu: If the original reading was Pṛavanga, then it might refer to Anga, according to N. L. Dey's identification of 'pravanga'. It would be better to identify Priyangu with the *Priyangupattana* of Vasudevahindi, from which place Carudatta is said to have gone to Cinasthana. Priyangu was in west or north-Bengal and is referred to in Irda plates.

Kausalyam: It is obviously the Kosala or Kosala country, probably the South Kosala. The Mahamayuri list mentions it along with Kalinga, in line 45 :- *Lambodarah Kalingesu Kosalyam ca Mahabhnjah.* Kosala is placed in the vicinity of Kaliriga in Kas. Sam. also.

Kalinga : Kalinga is well-known and referred to in MBH., Brhat-samhita, Asoka's Inscriptions, Mahamayuri list etc. As noted by Levi, it was "a well-known Janapada on the eastern coast of India lying roughly between the Mahanadi and the Gudavari." Robert Shafer has referred to the "Tibeto-Burmic name given (to Anga, Variga and) Kalinga, by earlier Tibeto-Burmic Colonists, since absorbed in the Dravidian population," at least so far as population of Kalinga is concerned. Shafer writes : "Anga-Vanga-Kalinga occurs so frequently in the Mahabharata that it must indicate a close geographical as well as racial association in the minds of the Aryans and not the separation of Kalinga by some 300 miles from Variga.... .The occurrences of *Kalinga* in the MBH. lead to the conclusion that early Kalinga did not extend SW. of Odra (Orissa) except in scattered settlements along the coast.......The Greek and Roman evidence led F. J. Monahan to a similar conclusion—"The Sanskrit name Kalinga was applied, it appears, in ancient times, to the greater part of the eastern coast region of the Indian peninsula, from the Ganges southward. Later, it took a more restricted sense, covering roughly, Orissa....."

Kalinga referred to in our text possibly denotes the older boundaries of Kalinga suggested by Shafer. In the east and north-east were Tamralipta and Priyangu, in the west was Kausalyam or South Kosala. There is no mention of Mahabharata names Anga and Vanga, or the later Gauda. It is certain that boundaries of both S. Kosala and Kalinga varied in different ages.

Prsthapurakam : To the south of Kalinga was Prsthapuraka, modern Pithapuram in Andhra. Prosta, mentioned in MBH. Geography (Cr. Ed. VI. 10. 60), possibly in south of Vindhyas, as suggested by Shafer *(Ibid,* p. 76), may refer to Prsthapurakam.

From verse 12b, the Kasyapa Samhita gives an account of people of the Southern quarter.

The first are *Kancipadas.* Identification of Kanci with Canjeevaram district is well-nigh settled. It is referred to in MBH. Bhismaparvan, Padma-purana, etc. It is also mentioned in the Mahabhasya of Patanjali. Pandit Hemaraja Sharma, in his introduction to the Kas. Sam., notes that it was the capital of Dravida-Cola-desa. Since the "Coras" are separately mentioned here the extent of Kanci referred to here should be smaller than the one suggested by him. The people and regions mentioned in vv. 12 and 13 are generally included in Dravida and Kerala of MBH, geography, see Shafer, *op.cit* p. 74. In v. 13b, we have Dravidesu ca, which if taken to refer to all the names in verses 12 and 13, then the above surmise may be correct.

Navadhvana cannot be identified.

Kaviras: These people must be placed in the region watered by the. Kaveri river. Kaveripatnam is now a village in the Salem district, Madras (Imp. Gaz. XV. 192).

Vanasi-Kumuda-Rajyam : The second part of this expression is puzzling. Vanasi may refer to some tribe; a distant possibility would be to equate it with Banavasi in North Kanara, referred to in the Mahamayuri list, line 46, as Vanavasi and said to have the Yaksa Svastika. But if the reading is incorrect, then it may refer to *Bana* or *Banapur*, an old name of Mahabalipuram according to Nand Lal Dey and *Kumbhaka* or *Kumbhaga*, modern Kumbhakonam. This of course is a conjecture only.

The Banasura legend is connected with Gangaikondacolapuram, Trichinopally (Imp. Gaz. XII. p. 128). It may be interesting to note that Bandas are a beggar community in the Kistna district (Imp. Gaz. XV. 324).

Banganpalle was a small State in the Kurnool district. The Banas, Vanas or Vanas may be an old tribe, as many place-names in India would suggest a distant connection with them. Vaniyas (Baniyas ?) are oil-presseres in the Madras Presidency. Vaniyambadi is a town in Tirupattur taluk, Salem district, Madras.

Regarding 'Kumuda etc.' it is interesting to note that *Komans* are a shepherd caste in South Arcot district (Imp. Gaz. *V.* 426), Madura (Imp. Gaz. XVI. 392), Puddukkotai (Ibid., XX. 233). *Komatis* are a trading caste in Southern India (Imp. Gaz. III. 302) in South Arcot district (Imp. Gaz. V. 326) in old Hyderabad State (Ibid., VI. 127; XIII. 265), in Ganjam (Ibid., XII. 152), Gubbi, Mysore (Ibid., XII. 345), Kistna district (Ibid., XV. 324), Kotta-patam, Guntur (Ibid., XVI. 6). Again another possible identification (or emendation) of 'Kumuda' would be with *Kungada-rajyam* of *Kongus* of Congu-nadu; for Kongu dynasty in Coimbatore and Salem see. Imp. Gaz , X. 358 and XXI. 398.

Ciripali: Pandit Sharma has suggested its identification with Trichinopoly which was formerly called *Trisiras-palli*. From the name of Senapati of Ravana, it was probably called Uragapura. Is it the same as *Uraga* of the Mahamayuri list, line 14, (JUPHS. *op. cit.*, p. 32) where it is mentioned with Tamraparni Levi identified Tamraparni (in Mahamayuri list) with Ceylon but for *Uraga* immediately following he suggested identification with *Urasa* in Hazara district in the North. I think that *Uraga* in the Mahamayuri list is ancient *Uragapura* of South India, identified with modern Uraiyur near Trichinopoly. The *Atavi in* the next line (line 15) of the Mahamayuri list possibly refers to west and south-west of the Vindhyas, including possibly forests of Lata etc. Bahudhanyaka mentioned next to Atavi in the same list has to be similarly searched in the south or west rather than in the north, since after it the list refers to Ujjayini, Bharukaccha and Anandapur. It may be interesting to note that there is a Bodhan near Nizamabad, not far from the course of Godavari (Imp. Gaz. VIII. 254). There is another Bodhan in the Mandvi Taluk, south Gujarat, up stream on the Tapti river, near Kamrej. Probably this is not an old site. But these names clearly demonstrate the existence of similar place-names in distant parts of India. There are two Bharathanas, three Paradis, three Abramas, two or three Bakrols in Gujarat. I would similarly like schol-

ars to search out Agrodaka, Amaraparpata and Suvastu, occuring before Girinagara and after Anandapura (modern Vadnagar, N. Gujarat), in the Mahamayuri list, from some sites in regions nearby Girinagara and Anandapura.

Cira-rajya has been mentioned in the Mahabhasya. Pt. H. Sharma suggested that Cira is an abridged and apabhrama's of Kerala (-putra). He placed it in the Mysore State. The Tamil kingdom of Cera is mentioned in Epics and Puranas. Cera Comprised present Malabar, Cochin and Travancore.

Cora, next, obviously stands for the Colas referred to as Codas in the inscriptions of Asoka. The Coras are identified with Colakas on the Coromandal coast.

Pulindas have been discussed at length by Moti Chandra and others. The Pulindas are referred to in Asoka's Rock Edict XIII as a vassal tribe. In the Aitareya Brahmana, VII. 18, they are mentioned with Andhras. In the Puranas (Matsya, 114. 46-48, Vayu, 45. 126) they are mentioned with the Savaras and are referred to as *Daksinapathavasinah* together with Vaidarbhas and Dandakas. The Mahabharata XII. 207-42 refers to them as the people of Daksinapatha. The Mahabharata XII, 207-42 refers to them as the people of Daksinapathi. According to B. C. Law, The Pulindas must have certainly included Rupa-natha, the find-spot of a version of Asoka's Edicts. The context would show that Pulindas inhabiting Travancore region are probably referred to in this passage of the Kasyapa Samhita.

The text says that the above-mentioned lands are in the Dravida country or that these people are included amongst the Dravidas. Then follows another group which is said to be of countries and/or peoples in the Southern quarter. First are mentioned -the Karaghatasanas, then the Vivehas in the Mandapa region, the Kantara land, the Varaha country and the Abhiras in the Ghatas (? Latas?).

Karahata I take the expression of verse 14a to mean that the Videhas, i.e. the natives or the countries of Karaghata and Sana are included in the land or region of the Mandapas. Karaghata is naturally identified with Karahata also mentioned in the Mahamayuri list, line 44, pp. 41-42, and is the same as modern Karad in the Satara District. "Sananam" cannot be explained. But "Sana" may be a scribal error for Suna (= Seuna country ?). Suna is mentioned in the Mahamayuri list (line 38, JUPHS, XXV, part 2, pp. 28 and 40) in proximity with Kosala here, according to Dr. Agrawala, appears to be Southern Kosala, and he suggests that Suna in the Mahamayuri list may be identified with Seuna. Hemadri locates Deogiri (Daulatabad) in the Seunadesa which he says was on the confines of Dandakaranya. The verse 14b then says that Kantara, Varaha and Abhira lands are in forests (ghatasu). Apparently these refer to forests to the W. and S.-West of the Vindhyas, for, the Abhiras are known to have lived in the Khandesh. That even Lata was a forest region in MBH. times is attested to by the fact that even upto this date people living in the region watered by the Mahi maintain that their land was Hidimba-vana of the MBH. fame. The Jyotirvidabharana, ascribed to Kalidasa, says, in XXII.14, that Vikrama was verily a fire to the forests of Lata (Central Gujarat or more probably the whole of the Western coast of modern Gujarat, excluding Saurastra) *Ldiatavl pavakah*. It is for this reason that I have suggested here emendations in the identifications of the Mahamayuri list beginning with Uraga upto Girinagara.

It would be better if a fresh attempt is made to identify in this all other places by keeping in mind the fact that the author after all did maintain sonic order in the list. In India it so happens that often one and the same name was given to widely different places. There was a Tambalipti on the Bay of Bengal and Cambay too was at one time given that name (see Dr. Motichandram, Geographical and Economic Studies in the Upayana-Parva, p. III).

Our list is unfortunately incomplete though with the above names South India is completed by our author.

Kuntara : Pt. Hemaraj Sharma has shown that Kantara is referred to in the Southern conquests of Sahadeva. He identifies it with Southern Konkana and Aurangabad district. Tagara was its capital.

The Allahabad Prasasti refers to Vyaghraraja of Mahakantara amongst rulers of Daksinapatha defeated by Samudragupta. B. C. Law writes "According to some Sambalpur on the Mahanadi was probably its capital. It is identified with the eastern Gondavana or with the southern Jharakhanda."

Vyaghraraja of Mahakantara is generally identified with Vyaghradeva, a feudatory of the Vakataka ruler Prthvisena I mentioned in the Ganj. Ins. (Ep. Ind. XVIII, p. 12) and Dr. Krishnaswami Aiyangar suggested (Indian Ant., 1926, p. 2) that Mahakantara might have included the Saugor division of the C. P. extending northwards to the Ajaighad State in Bundelkhand. G. Ramadas in Journ. Andhra His. Soc. Vol. I, p. 223, suggested that Mahakantara must be a mahavana, a great forest region in the south extending northwards into the Ganjam Agency and Westwards into the tract known as the Chattisgarh states of the old C. P.

Nand Lal Dey in his Geographical Dictionary, p. 89, takes Kantaraka= Aranyaka and on p. 10 places it as a kingdom situated on the south of Ujjain and Vidarbha on the evidence MBH. Sabha, 31. This according to him is the Aranya of Devipurana, chap. 46 and Ariaka of Periplus. With Da Cuhna he took Aranyaka as comprising a great part of Aurangabad and Southern Konkana.

Varaha: Pandit Hemaraja Sharma suggested that Varaha may be identified with modern Varada or Berar.

There is a Barwaha town in Central India, Nimar district (*Imp. Gaz:*. vii. 89-90) a Barwani state existed in Central India (*Ibid.*, vii. 90-93) while Barwars are a criminal tribe in Gonda district W. P. (*Ibid.*, xii. 134), Barur is is a town in Amraoti district, Berar (*Ibid* xxiv. 378), there is a Warora tahsil, in Chanda district old Central Provinces (*Ibid.*, xxiv. 377). Wardha in the Nagpur division may also have a claim to Varaha (*Ibid.*, xxiv. 375).

Abhira : The Abhira land or peoples are Abiria of the Greeks. In the Mahabharata, Sabhaparvan, Chp. 51 they are located in Western India. The evidence of the Mahabharata is supported by the author of Periplus and by Ptolemy. The MBH. IX. 37.1 definitely locates the Abhiras in W. Rajaputana and where the Sarasvati disappears. The Abhira people are usually associated with Aparanta which indicated in a wider sense the western divi-

sion of India and in a narrow sense only the northern part of the Konkan. The Periplus and the Geography of Ptolemy located Aberia or Abiria, *i.e.* the Abhira country between the lower Sindhu valley and Kathiawad, apparently in southwestern Rajaputana and adjoining regions.

The Abhira country is mentioned in the Allahabad Inscription of Samudra-gupta as one of the tribal states of Western and South-western India. Raja Mathariputra Isvarasena son of Abhira Sivadatta is mentioned in the Nasik Inscription of his ninth regional year. Isvarasena's dominions thus comprised the Nasik region in Northern Maharastra. The Abhiras continued to rule as late as the middle of the fourth century when according to Chandravalli Inscription (if it is not false) they came in conflict with a Kadamba King.

The Vayu Purana (clip. 45.136) and the Markandeya Purana (clips. 57-58, vs. 45-48 and v. 22) place them with those dwelling in the Southern country. They are called *Saksinapathavasinah.*

In another passage of the Kasyapa Samhita, in the Bhojana-kalpa-adhyaya, pp. l68f of the Kalpa-sthana, we find another reference to some countries and peoples. Here also the topic is similarly the *Desa-satmya, i.e.* the suitable diet of different lands and peoples. I quote only the passage giving names and peoples.

The author begins with the people of *Kuruksetra* and the *Kurus.* The ancient Kuru country comprised the region around Kuruksetra or Thanesvara. The region included Sonapat, Amin, Karnal, and Panipat and was situated between Sarasvati on the north and Drsadvati in the south. The territory of the Kurus appears of have comprised the Kuruksetra, Kuru's country and the Kurujangala (MBH. Adi. cix. 4337-40). Kurujangala was the eastern part of their territory, and appears to have comprised the tract between the Ganges and the northern Pancala (Ramayana, Ayodhya., i xxii; MBH. II. xix. 793-4). The middle region between the Ganges and the Jumna was simply called Kuru's country. As Rapson puts it, "Kurus must have occupied the region between Ganges and the Jumna, having as their neighbours on the east, north-Pancalas, and on the south, south-Pancalas, who held the rest of the Doab as far as Vatsa-bhumi, the corner where the two rivers met at Prayag."

Pancala-dcsa comprised Bareilly, Badaun, Farrukhabad and the adjoining districts of Rohilkhand, and the central Doab in U. P. It extended, according to Cunnigham, from the Himalaya mountains to the Chambal river. Pancala divided into southern and northern Pancalas had Kampilya and Ahicchatra as their respective capitals.

Naimisaranya known to the Brahmanas, Epics and Puranas was situated on the bank of the Gumati in the Sitapur district. According to Ramayana, Uttara., sarga, 91, it was situated on the left bank of the Gomati.

The *Manicarah* may be a corrupt reading for *Maniparah or Manivarah. Mani is* a gotra in the Visvamitragana. *Mani* is a Rsi in Mahabharata (II. 11.442, see Sorenson's Index, p. 464 for MBH. references to Mani = rsi; a serpent; a companion of Skanda, as also to *Manibhadra,* a Yaksa, *Mammal, n* Yaksa or a raksasa). The *Maniharas* are very numerous in the Uttara

Pradesh and adjoining regions. The Manis, Manicaras or Manivaras or Maniharas seem to have spread in U.P., Bihar, Bengal, etc. One would not be surprised if Maniyar Math and the worship of Mani-Naga at Rajgir were to be found originally associated with the Maniar or Manis. There are many place-names which suggest association with Manis or Manis. Maniar is a town in Ballia district, U.P. (Imp. Gaz., XVII. 181-182). Manbhum in Bihar and Maniktala in 24 paraganas, Bengal could have been associated with Manis or Manicaras. The same Manis or Mani seem to have been associated with Manipur in Assam. There is a Manihari village on the northern bank of the Ganges in the Purnea district. In Orissa there is an area known as Manibandha; under the circumstances it would not be quite out of place to connect Mani-Naga of Rajgir with Manis or Manis.

The *Kausaleyas* are people of the Kosala country of the both northern and southern Kosalas. The next group referred to as *Haritapadascara-Saurasenah* in the printed text should be emended as *Harita-Pataccara-Saurasenah*. The Hari-tas and the Pataccaras must be located near the Kausaleyas and Saurasenah mentioned in one context by the K. S. The *Hariyana* district of East Punjab possibly derives its name from Haritas. For Hariana, a town in the Hoshiarpur distr., Punjab, sec. Imp. Gaz., XIII. 54 ; for Hariana dialect, see. Imp. Gaz., XIII. 148, XIV. 170. There is a Haraiya tehsil in the Basti district, U.P. (Ibid., XIII. 40) comprising the paraganas of Amroha. Nagar (west) and Basti (west) and lying along the Ghogra river. There was again the Haraoti and and Tonk agency during the British rule. *Harmoli* means the country of *Hara Rajputs* (a sect of the Chauhanas) which comprises the territories of Bundi and Kotah (Imp. Gaz. XIII. 40). Then again *Hardoi* is a western district of Lucknow divison, U.P., with the district town of Hardoi showing an ancient mound (Imp. Gaz. XIII. 50-51).

Haritas are also referred to in the Padataditakam, a Bhana assignable to the Gupta age.

In the Apastamba Srauta sutra, xxii. 6.11, the Magadhas are mentioned along with other peoples of both the E. and W. India, namely, the Kalingas, Gandharas, *Paraskaras*, and the Sauviras. Can we emend *Padascara* to *Paraskara ? Paraskara-desa* is known to the Ganapatha, cf. *Paraskaruprabhrtini ca samjnayam* (Panini, 6.1.157). Patanjali commenting on the above says: *Paraskaro desalt.* Paraskara is also the name of a mountain according to Panini, 4.5.10. V.S. Agrawala places Paraskara desa to the east of Sindh, near Thar-Parkar district. In that case the emendation is less likely.

A better emendation for *Pudascara* would be *Pataccara*, the *Pataccara Pradesa* being known to Ganapatha, *palyadigana*, cf., Panini, 4. 2. 10. V. S. Agrawala identifies this land with the area around Pataudi. A better identification would be with *Paliyala*. It is just likely that either *Pataccaras* or *Paraskaras*, which near Kausaleyas and Pancalas and Saurasenas mentioned in the same context by the Kas. Sam., especially the *Pataccaras*, as Patanjali commenting on *Prasthaottarapadapaladyadikopadhadan* (Panini, 4. 2. no), mentions them in the following group-*Surascnas, Gomati, Pataccara, Udapana.* and *Yakrlloma*. Gomati is the valley of the Gomati river and Yakrlloma according to Agrawala's suggestion would be in the Jalaun, Urai, Kauncha and Kalapi area of the U.P. *Pataccaras* are also mentioned in the *Mahabharata* Sabha. 3-2. 4"

Surasena is one of the ancient Janapadas known to Buddhist texts like the Anguttara Nikaya and the Pali Sutta Pitaka. Surasenas had Mathura as their capital. Ancient Greek writers refer to it as Sourasenoi.

The country of the *Matsyas* comprised the modern district of Jaipur. It included the whole of the present territory of Alwar, with a portion of Bharat-pur. B.C. Law writes According to the RV. vii. 18.6, the country of the Matsyas lay to the south of Surasena or south-west of Indraprastha and to the south of Surasena. Viratanagara or Vairata was its capital, so-called because it was the capital of Virat, king of the Matsyas. In RV. vii. 18.6-7, the Matsyas are mentioned along with other tribes, namely, Druhyus and Bhrugus. A Matsya king is mentioned in the Sata. Brah. xiii. 5. 4. 9. (SBE. vol. xiiv. p. 398), in the Kaustiaki Upa. iv. I (SBE. vol. i. p. 300), the Matsyas are mentioned along with other tribes, namely, the Usinaras, Kuru-Pancalas and the Kasi-Videhas. In the Gopatha Brah. 1. 2. 9. (R. L. Mitra's ed.), they are connected with the Salvas and their relation is also attested to by the MBH. Virata., ch, 30. According to Manu. II. 10-29 (SBE. xxv. pp. 32-3), the plains of the Kurus, the country of the Matsyas, Pancalas and Surasenakas formed the country of the Brahmarsis, which ranks immediately after the Brahmavarta.

The *Dasarnas* are mentioned next of the Dasarna country, Vidisa, modern Besnagar, close to Bhilsa, was the ancient capital, situated on the river Vetravati or Betwa. Elephants of Dasarna country are referred to in the Arthasastra^, II.2. Dasarna country is mentioned in the Mahabharata, 11.5. 10 and Ramayana, Kiskindha., 41.8.10. The Puranas associate the people of the Dasarna country with the Malavas, Karusas, Mekalas, Utkalas and Nisadas. A Dasarna king Ksatradeva fought for the Pandavas. For Buddhist references from Mahavastu, etc., see. Law, Historical Geography of Ancient India, p. 314.

The *Sisiradrijah* mentioned next (Kas. Sam.) in v. 41, may be natives of the Hinialayan regions. Now, the author refers to northern and north-western regions. The *Sisiradrijah* are probably the Haimavatas of Mahabharata. II.47.19, discussed by Moti Chandra and others. Himavantapadesa of Mahavamsa ch.xii, has been identified with Tibet by some, with Nepal by Fergusson, with Central Himalayas by Rhys Davids. Emodos, Hemodos or Imaus of Greek writes may be Haimnavanta. Moti Chandra writes, the name was applied at first by the Greeks to the Hindukusa and the Himalayas, but in course of time was transferred to the Bolar Range.

The *Sarasvatah* may be natives of the regions watered by Sarasvati before Vinasana. Sarasvata, according to Nanda Lal Dey is the (1) Pushkara Lake near Ajmere on the evidence of Varaha Purana or (2) Sarasvata-pura on the north-west of Hastinapur, on the evidence of Hemakosa.

The *Sindhu-Sauvirah* are included in the list of Janapadas in Markaodeya Pu.,ch.57. The Pali texts refer to them as great centres of trade and commerce. In the Mahagovinda Suttanta, Sovira has been described as a kingdom with Roruka as its capital. According to Law, it was probably situated between the Indus and the Jhelum. The Sauviras are referred to in the Baudhayana Dharma Sutra, 1.2.14 where expiation is prescribed after a visit to this

country. In the MBH. Bhismaparvan (51.14), the Sindhus and the Sauviras are mentioned together and are associated with the Sivis, *Vasatis* and the Gandharas. According to the Agnipurana, ch.200, the river Devika, but according to Bhagavata Pu., the river Iksumati, flowed through Sauvira. The Mahabhasya refers to a city Dattamitri in Sauvira.

According to V. S. Agrawala, "Sindhu as a Janapada may be identified with Sind-Sagar Doab, the region between the Jhelum and the Indus. Most of it is now the sandy desert of Thal. Panini mentions Sauvira and gives valuable social history of the region. It was the home of many *gotras*...." "To the south of Kekaya was situated the Sindhu Janapada lying north to south between the rivers Jhelum and Indus. Along the lowermost course of the Indus was situated the ancient Sauvira Janapada now known as Sindh."

The people living between the Kurus (*ye cantare syuh manujah Kurunam*), are, of course, people living between the Uttara-Kurus and the Kurus of India or the (Daksina-) Kurus. The Uttarakurus are historical people in Vedic literature, and in the Aitareya Brahmana, viii. 141, they are located beyond the Himalayas. Zimmer placed them in Northern Kasmir and Keith and Macddonel agreed. The exact location of Uttara-Kurus is, however, difficult, as shown by Moti Chandra.

The *Udag- Vipat* are people to the north of the river Vipas and the expression may also go with *Sindhu-Vasatijah*, who are people living in the Sindhu Valley and between the Indus and the Jhelum. Vasatis are linked with Mauleyas who, according to Moti Chandra, perhaps lived in the Mula valley in Jhalavan. The Vasatis have been identified with Ossadiovi of Arrian (Anab. VI, 15) who offered their submission to Alexander at the confluence of Chenab and Jhelum... M. Saint Martin places them between the Jhelum and the Indus on the strength of Hemacandra's Abhidhanacintamani. Vasatis are mentioned in MBH. Sabha, 48.14.

Kasmira and *China* are well-known. Kasmiras are mentioned along with Daradas in MHB. Dronaparva, LXX. 2435. Kasmira, the Kasperia of Ptolemy, was known to Panini (4.2.133), to Patanjali (3.2.2), and to Buddhist texts like the Divyavadana, Avadanasataka etc. The Chinas are known to MBH. Sabha., Chps. 47 and 48 where they may be people of Southern China. The Aparachinas may be people of Western China.

The *Khasyas* may be the Khasas referred to in MBH. Sabha, 48.3, who, according to Muti Chandra, are identical with the present *Khakha* tribe of the Vitasta valley below Kashmir and in the neighbouring hills. In Nepal the Gurkhas are designated as Khas.

M. Sylvain Levi (BEFEO, Vol. IV, p. 556) stated that Kasa or Khasa does not indicate any particular tribe but a member of semi-Hinduised tribes inhabiting the Himalayas. But in the Central Asia the name has a special significance. The Lalitavistara mentions Khasa writing which was in use between the countries of Dardistan and China on the upper course of the Indus, and equated with Chou-le, *i.e.* Kashgar.

The *Valhikas* are people of the Balkh-Bactria. The original reading could have been Vahikas as the next tribes mentioned are Daserakas, Satasaras, Ramanas etc. Vahikas lived in Punjab between Vitasta and Iravati; ace. to Shafer, *op. cit.*, p. 33, they probably occupied

the land of the Arattas. Also see Ethnic Settlements in Ancient India, pp. 116ff. Hemacandra identifies Daseraka with Marava (Marwad), Abhidhana-Cintamani, 4. v. 957. He identifies Vahikas with Takkas, ibid. v. 959. MBH. VL 50.47 refers to Dasarnas and Daserakas. If Valhikas were the correct reading, Daserakas should be emended. Because Daserakas being far away from Bactria, they would not be mentioned in one context. In that case *Dardeyaka* is a possible emendation. They would be Daradas conquered by Arjuna along with Kambojas (MBH. II. 48. 12). Daradas are people of Dardistan, the Derdai of Greek writers. Satasaras should be near Balkh and Dardistan mentioned above on the one hand and Ramanas following Daserakas (in the same verse), on the other hand. It is difficult to identify Satasaras or to emend the text.

Ramanas may be Romakas of MBH. II. 47. 15. Moti Chandra identifies them with people of the Salt Range in Punjab, the Salt Range itself being named. Oromenus by Pliny (Hist. Nat. XXI. 39). As stated by Moti Chandra, " it is also interesting to note that the Shins of Baltistan also call themselves Roms " If the Ramanas were to be emended as Ramanas, also mentioned in MBH. II. 2911 and coupled with Harhuras, then the Ramatha country has to be located somewhere near the regions of South Persia, Baluchistan, Afghanistan, Bokhara etc., as shown by Moti Chandra, on account of the fact that Ramatha or asafoetida is produced in these regions. Levi places it between Ghazani and Wakhan. Moti Chandra identifies Ramatha country with Kharan district of the Kalat state, contiguous with ancient Aria (Herat) and Archosia (Kandhar).

People of Eastern land are mentioned in v. 49. *Kasi, Pundra, Anga, Vanga* are well-known. *Kacas* may be people speaking the Kucha dialect, but their location in the East or north-east of Vanga is uncertain. The Karas in this context must be identified with *Kacins* or *Kudus* tribe of Tibeto-Burman origin inhabiting upper Burma and the Shan states (Imp. Gaz. iii. 125, ix. 139. xiv. 253-255). For Kachin group of dialects of the Assamese-Burmese branch, see, ibid., i. 387, 394, 401. The Kacas must therefore, be located in Kacar, Assam and Burma. Also see *Kirata-jana-krti*, by Suniti Kumar Chatterji. *Anupa* next may be marshy region of the Ganges. I prefer the reading *Tosaleyas* to Kosaleya. Tosaleyas will be people of Tosali, mentioned in Asoka's Kalinga Rock Edict I, which is the Tosalei, of Ptolemy, identified with Dhauli in the Puri district of Orissa. "

Pattanavasinah may be residents Masulipattanam or Visakhapattanam on the east coast, probably the former.

Narmadeyuh along with Daksinah (*saduksinah]* are people of the Narmada Valley and the Daksinavasinah of the People or the people immediately to the South of the Narmada. In MBH., Vanaparva III. 80,8354, Narmada is spoken of as a sacred river on which Avanti is situated. Narmada is Narmados of Ptolemy. The Narmada is invoked in RV. Khila sukta 2, at the end of RV. mandala.

The above rather lengthly analysis of the two sections of the Kasyapa Samhita referring to Desa-Satmya was necessary to show that while the countries and peoples noted on p. 171 of K.S. in the Bhojanakalpadhyaya are known to literature earlier than c. 1st century B.C., some of the references in the Khilasthana passage from K.S., seem to be later and

show a somewhat later geography. Probably the references in the Bhojanakalpadhyaya date from c. 2nd century B.C., if not earlier. The Khilasthana is not later than c. 400 A.D. The Bhojanakalpadhyaya may belong to the age of Jivaka himself, i.e., c. 5th century B.C. or somewhat later, but certainly it belongs to an age earlier than the beginning of the Christian era while the Khilasthana chapter was added by Vatsya, a devotee of Anayasa Yaksa, in 300-400 A.D. Worship of Anayasa Yaksa went out of use at Kausambi in Vatsa country in the Gupta period when even Kausambi lost its earlier importance. Vatsya himself states that he has added the Khila-section.

An analysis of the two passages was necessary in as much as they show to us the positions of some of the tribes in different parts of India in particular periods. Such studies are likely to be useful to students of Ancient Indian Geography and Ethnology.

L

Law of Evidence

Authorities (under the signatures of six Pundits, Council [sic] learned in the Law) or texts of different Hindu Lawgivers, on the nature (*as affecting the admissibility or otherwise*) of Evidence; distinguishing those persons who ought to be admitted and those who ought not to be admitted as witnesses. The words in italics are erased by a stroke of the pen. How adequate this is as a description of the document we shall soon see.

A number of *vyavasthā-s* have been published, *in extenso* or in summary, in Sanskrit or in translation. Actual specimens are very rare. An opportunity to see how Hindu Law Officers went about their task in purely procedural terms is interesting, and to see what the European judges had before them when they disposed (or attempted to dispose) of litigation. Admittedly we are in the dark as to the question put to the pandits. One cannot explore fully an answer to an unknown question. But we can infer from the answer what the question must have been. To have the specimen of the pandits' work before us is illuminating. The subject-matter helps us to visualize the date, to which I shall revert below. The Hindu law of procedure was superseded, and with it the Hindu law of evidence, in the territories subject to the East India Company in its *divani* jurisdiction, by Regulations passed by the Governor-General in Council. Irrespective of the Regulations of 1780, the major reorganization of 1793 left no scope for ordeals, and that part of the Hindu law of evidence became obsolete in the East India Company's courts if not in popular practice. Until that time, from 1770 onwards, not only the substantive Hindu law in the so-called 'listed topics' (e.g. marriage and inheritance) was applied by the East India Company's judges in the Zillah [Mufassil] and Sadr Adalats, but also the basic Hindu notions of civil procedure so far as these related to pleading and proof. It was inevitable that English or Scots judges, conversant with the outlines of procedure as known in Britain, should greet with much less surprise than we would, a system of law in which, with specific exceptions, single witnesses were thought incompetent to prove a claim, and a very long list of disqualifications had to be consulted whenever it was

claimed that a decision in an inferior court had been arrived at on the basis of the testimony of incompetent witnesses. The canon law, after all, which still regulated, in large measure, the procedure of the ecclesiastical courts, had corresponding rules (to which, not surprisingly, common-lawyers took objection). If ever India goes back to her ancient learning in order to make her judicial procedure more simple and more efficacious, it is not likely that these archaic rules will be revived. But they had their point while they lasted, and as we see from the *Vivādārṇava-setu* (hereafter Setu), which Warren Hastings had compiled by a committee of pandits between 1773 and 1775. *Derrett, Religion, Law and the State in India* (London, 1968), 239-42, 271. It is of interest to read an English version of the Persian translation of passages copied by our pandits, at (N.B.Halhed), *Code of Gentoo Laws* (London, 1777), 110-14. Until its defects were discovered it was seriously intended to make it a statutory source of law for Hindus (W. Hastings to Lord Mansfield, 21 March 1774, in G.R. Gleig, *Memoirs of Warren Hastings*, London, 1841, I, pp. 399 ff., 400—an important letter for Indian legal history). It is not so surprising that pandits consulted the *Setu* constantly, though they knew it was imperfect in various ways (see particulars at Derrett, op. cit., 271, n. 3 (and see *Sabitri* v. *Savi* [1932] 12 Pat, 359, 487-8). Sir William Jones' campaign against the *Setu* did not have the effect of inspiring a treatise (Jagannātha-style) on evidence and procedure; consequently the *Setu* still held the field for pandits' purposes till the end in that area. It is of interest that W.H. Macnaghten's translation of the *Mitākṣarā* on procedure (utilized by F.W. Macaghten) was thought worth reprinting as late as Girish Chandra Tarkalankara's edition of the translations by Colebrooke of the *Mitākṣarā* and *Dāyabhāga's* portions on Inheritance (Calcutta, 1870).

It was expected that the procedural law along with the law of evidence would continue in function for some considerable time. Our *vyavasthā* evidently belongs to an early period, while that learning was still of practical value. In spite of F.W. Macnghten's suggestion that such learning was obsolete by 1824, it is theoretically possible that the question could have been put as late as 1854 or even 1855 (though this is not the estimate, as we shall see, which I propose to make).

First we should consider the text, then translate it, and then comment on its significance.

Śrī-Hariḥ

Caṇḍeśvara-Viśvarūpa-Kullūka-bhaṭṭa-Mitākṣarā-Vācaspatimiśra-Raghunandana-bhaṭṭācārya-Vivādārṇava-setu-Halāyudha-prabhṛtinām matam.

Nāradaḥ:

teṣām api na bālaḥ syān naiko na strī na duṣṭakṛt |
na bāndhavo na cārātir brūyus te kāryam anyathā | |

kāryam satyam api, anyathā tad-viruddhatvena *brūyuḥ*. evaṃ ca yadi paramadhārmikatvena bāndhavādinām api satyavāditvaṃ niściyate, tadā te 'pi sākṣiṇo bhavitum arhanti. teṣāṃ sākṣyabhidhāyakaṃ vakṣya-māṇavacanam apy etad-vidhāyakam.

Vājnavalkyaḥ: *Yājnavalkya-smṛti*, II. 69. Dh. K. 282a. Note that the *Setu* included II. 68 immediately prior to this verse.

tryavarāḥ sākṣiṇo jñeyāḥ śrauta-smārta-kriyā-ratāḥ |
yathā-jāti yathā-varṇaṃ sarve sarveṣu vā smṛtāḥ | |
yathā-jāti yo yajjātīyas tasya taj-jātiyaḥ sākṣi.

Yājnavalkyaḥ: *Yājn*. II 72cd. Dh. K. 284. Macnaghten's translation of dharmavit as 'one of virtuous knowledge' (see below) is comical and throws light on the pandits' power, at that period (before 1824) to explain themselves. See on this text and the whole subject G. *Jha, Hindu Law in its Sources*, I (Allahabad, 1930), 110-11.

ubhayānumataḥ sākṣi bhaved eko' pi dharmavit |

ubhayānumatatvaṃ dharmavittvaṃ ca militaṃ tantram. yathā Viṣṇuḥ: Viṣṇu, VIII. 9. Dh. K. 244b. The reading *abhimata* (for *abhihita*) is in the *Vyavahāra-cintāmaṇi*, whence the Setu probably chose it.

abhimata-guṇa-saṃpannas tūbhayānumata eko' pi |

ata eva śrotriyam apy ekaṃ niṣedhavati: From the last quotation from *Yajn*. we have been following the *Setu* (p. 118). The subject of *niṣedhayati*, which could not be seen without such a reference, is Bṛhaspati! *Dh. K.* 325b. The reading of the *Setu*, *saptāthavā pañca* is found in the *Vivāda-tāṇḍava* (*Dh. K.*).

nava saptāthavā pañca catvāras traya eva vā |
ubhau tu śrotriyau grāhyau naikaṃ pṛcchet kadācana | |

eko 'bhimata-guṇa-saṃpannaḥ pradhāna-kalpaḥ, tad-abhāva ubhayānumata-mātro 'pi grāhyaḥ. tathā ca Nāradḥ::

ubhayānumato yaḥ syād dvay (o)r vivadamānayoḥ |
bhaved eko 'py aduṣṭas' cet praṣṭavyaḥ syā sa saṃsadi | |

ubhayānumata eko 'lubdho 'stenatvādinā sarva-jana-<pra> siddhas' cet, tadā sākṣitvena sa (bhā) yāṃ praṣṭavyaḥ. tathātve sneha-vairādi-sattve 'py akirti-bhayāt satyābhidhāna-saṃbhavād ity āśayaḥ, vicārasya tattvanirṇayārthatvāt.

Nāradaḥ:

stenāḥ sāhasikā (dhūrtā)ḥ kitavāḥ krodhakās' ca ye |
asākṣiṇas tu te jneyās teṣu satyaṃ na vidyate | |
kitavo dyūta-kāraḥ. atrāpavādam āha Uśanāḥ:
dāso 'nadho badhiraḥ kuṣṭhi s(trī-bāla)-sthavirādayaḥ |
ete 'py anabhisaṃbandhāḥ sāhase sākṣiṇo matāḥ | |

sthaviro glānendriya-grāmaḥ. ādi-śabdāt kitavādayaḥ. ubhayānumatatvābhāve 'pi śucikriyatvādi-guṇa-yukta eko grāhyaḥ. tathā ca Vyāsaḥ:

śuciḥ-kriyas' ca dharma-jñaḥ sākṣi yatrānubhūtavāk |
pramāṇam eko 'pi bhavet sāhaseṣu viśeṣataḥ | |
anubhūtavāk sthānāntare satya-vāditvena khyātaḥ.

The letters in round breackets have been obliterated by scorch-marks, two of which leave gaps in the paper, fortunately depriving us of no more than part of the name of one of the pandits. It seems clear that the *vyavasthā* originally finished at *khyātaḥ*. The last words (from *sāhaseṣu*) are written round the right side of the recto side of the paper, in order to avoid carrying onto the verso side, and so as to comprehend the entire opinion within the authentication of the six signatures.

The signatures, or rather sign-manuals, are in the archaic form known from pandits' signatures on *vyavasthā-s* such as have been reproduced with some faithfulness hitherto. The pandit first writes his motto with which he normally heads a letter, and thereunder his name. It is a mothod reminiscent of a seal. Since many names are quite common, and the custom of writing the title, e.g. *nyāya-pañcāana*, after the name appears not to have developed (even latter it was optional whether a pandit used his title or simply *śarmā*), this system did at least give some chance or recognizing signatures. The six appear as follows:

Rāmeśvaro jayati	Śivo jayati
Sri kāśinātha	Śri Kāliśankara
śarmmaṇah	śarmmaṇaḥ
Śri-Hariḥ śaraṇam	śaraṇaṃ
Śri-Sadāśva	(Gauri-kā)nta
śarmmaṇaḥ	śarmmaṇām
Śrinivo (*sic*) jayati	Śri Viḥ (*sic*) jayati
Śri Rājendra	Śri Hari-deva
śarmmaṇaḥ	śarmmaṇaḥ

The opinion may be translated as follows:

'The view of Caṇḍes'vara, Viśvarūpa, Kullūka, the *Mitākṣarā*, Vācaspati, Raghunandana, the *Vivādārṇa-va-setu*, Halāyudha and others:

'Nārada says, "Amongst them (i.e. the witnesses) there should be no child, no single person, no woman, and no wicked person, no relative, no enemy: they would state the fact improperly." "Fact" means the truth, "improperly" because it would be opposed to that, that is what they would state. It follows that even if relatives, etc. being highly attached to *dharma*, are adjudged to be truthtellers, they too ought to function as witnesses. In fact a text below establishes this point while laying down that they can be witnesses. Yājñavalkya says, "Not less than three are to be known as witnesses, devoted to the rituals of the Veda and the *smṛti-s*. Or all men are traditionally known to serve (as such) according to their caste and according to their *varṇa*" "According to their caste" means that a man may be a witness on behalf of his caste-fellow. Yājñavalkya says, "Even one person, who knows *dharma* may be a witness if he is agreed to by both sides."

The technical requirement is double: he must be a *dharma*-knower *and* agreed to by both sides. This is exactly what Viṣṇu says: "A single person may function if he possesses qualities which are esteemed and is agreed to by both." However, a single *s'rotriya* he forbids. "Nine, seven, or five, four or three, or even two *śrotriya-s* may be admitted, but he should never interrogate a single (*śrotriya*)." As for a single witness, the preference must be for one who "possesses qualities which are esteemed"; but, in the absence of one such, a witness may be admitted if his only qualification is that he is agreed to by both sides. This is what Nārada says, "If there is a witness who is agreed to by both litigants, though he is alone he can be produced before the court provided he is free from disqualification (it is implied that he should be free from guilt)." If a single witness is agreed to by both, and is "greedless" (in the sense of *Manu* 8. 77), well known to all the people as such because he is not a thief, etc. then he can be produced in court to be a witness. Consequently the principle is this, that even though affection or enmity towards one party may exist it is possible that he will depose truthfully out of fear of spoiling his reputation: for the purpose of the inquiry is to establish the truth. Nārada says, "Thieves, men of violence, swindlers, gamblers, and persons given to anger, all are known to be unfit to be witnesses: truth does not exist in them." "Gamblers" means dicers. Us'anas states an exception: "The slave, the blind, the deaf, a leper, women, children, and the aged, etc. even these are recognized as witnesses in a case of violence, provided they are unconnected with the parties" "Aged" means one whose combined senses are worn-out. The use of the word "etc." shows that gamblers, etc. are included.

'If there is no witness to whom both parties have argeed, a single witness may be admitted provided he possesses the qualities of performing pure rituals, and the like. This is what Vyāsa says: "A witness whose rituals are pure, who knows *dharma*, and whose speech is tested and tried—such a one, even though alone, may be a means of proof, especially in cases of violence." "Whose speech is trusted and tried" menas one who is well known in a particular place for his truth-telling.'

There can be little doubt but that this *vyavasthā* is in answer to the question, 'You are

to inform us in what circumstances a single witness may be admitted to prove a party's case.' The answer, in short, is that, given various circumstances, a single witness is allowable, and in particular where both parties consent, in the absence of better means of proof. It is possible that the pandits, or some of them, were already aware that in English law, testimony, oral or written, can often be admitted, even against the technical laws of evidence, if the parties agree, since those laws are for the protection of the parties and may be waived by them. The question to which this document is the answer can have emanated from a Zillah court, or from the Sadr Diwani Adalat, but I suspect it emanated from the Council (whose membership overlapped with the Adalats) at a time when English scepticism ran up against Hindu conservatism here. No doubt a similar question was put to Muslim Law Officers. However, our suspicion is not proof, and the unusual number of pandits signing this document could indicate, not an extraordinary request from the Government, but even an opinion obtained (conceivably even by a party) in the course of an appeal.

Reading through the references added above, one is aware that the pandits started their researches not simply from their copious memories, but in the *Setu*. Completed in 1775, Warren Hastings wanted it to be made a statutory source to which courts must apply themselves when dealing with matters (within the listed topics) between Hindus. He was unaware that no European judges who took the judicial function seriously, and aimed to be more than puppets in the hands of their native assessors or advisers, could possibly learn how to use the discretion which native judges had always had: for example, the jurisdiction to determine whether a witness was a person of good character or 'attached to *dharma*', etc. a question meaningful to a native court, would be worthless in the hands of a European. But such difficulties were not yet present to the minds of hastings and his councillors. The pandits in this case, quoting liberally from the *Setu*, give us, unawares, something of value. The *Setu*, copies of which are extremely rare, has been compared by Dr. Mrs. Rosane Rocher with one or more manuscripts, and has been found to be corrupt. The version which our pandits give, though not deliberately literal, provides certain better readings which may be of critical value when a clean text is eventually prepared. The top line of our paper was added as an after-thought, since the pandits probably thought it desirable, as so many authors of their age did, to show not merely that they had used an 'authorized' digest but that they knew their law represented a consensus of antique opinion. Apart from Hastings' pandits (the work of Jagganātha did not deal with Evidence) only old authorities were thought to be reliable.

On the verso side of the paper we find the following:

Yājnavalkyaḥ:

dvaidhe bahūnāṃ (vacanaṃ) sameṣu guṇināṃ tathā |
guṇa-dvaidhe tu vacanaṃ grāhyaṃ ye guṇavattarāḥ | |

teṣām iti śeṣaḥ. yat tu—
sākṣiṇāṃ likhitānāṃ ca nirdiṣṭānāṃ ca vādi (nā) |
teṣām eko' nyathā-vādi bhedāt sarve' py asākṣiṇaḥ | |

iti Kātyāyana-vacanam, tatra trayāṇāṃ tulya-rūpāṇāṃ sākṣiṇāṃ madhye ekasya vākyasya anyath (ā)-vāde aparasya tat-tulyasya sat-pratipakṣatayā tṛtiyasya kiṃcid-vāditve tatra *bhedāt* paraspara-viruddhārthābhidhāna-bhedāt sā(kṣ)ibhyo na nirṇaya iti param. Bṛhaspatis tu <ṣaṭ>-karma-niṣṭhānāṃ grahaṇam āha, guṇa-dvaidhe kriyānvitā ity anena. <tulya-rūpāṇāṃ dvaidhe tu na sākṣibhyo nirṇayaḥ.>

The senence added at the end completes the paragraph as found in the *Setu*, which the author is following a little more loosely than the pandits overleaf. We may translate:

'Yājnavalkya says, "Where there is a contradiction the word of the majority should be accepted; where they are equally divided that of the possessors of good qualities; where the qualities are distinguishable, those that have more qualities." We must complete the sense by adding "(the word) of those that, etc." As for the text of Kātyāyana which says, "Where witnesses subscribed or are produced by a party, and one of them says what is untrue, as a result of the discrepancy all are non-witnesses", the point of it is this: assume that there are three witnesses of equal standing, and one of them utters an untruth and the second is like him, but the third, out of opposition (to them) says something different, there is a "discrepancy", i.e. a discrepancy arising from their deposing material which is mutually discordant and (since to accept his testimony would be tantamount to relying on one witness) the decision cannot be based on witnesses (but recourse must be had to other means of proof). But Bṛhaspati speaks of accepting those who are firm in the (six) ritual duties, in the text which says that where the qualities are distinguishable those (should be accepted) who are equipped with rituals, (but where the witnesses are of equal standing and there is a discrepancy in their testimony the decision cannot be based on witnesses).'

The sketching and the writing of this opinion is not equal in quality to that overleaf. The Sanskrit ignores the rules of *saṃdhi* more often (an oral style) and letters are left out by accident in the copying, inserted later. The effect is a hurried one. I suggest that it is an opinion, not backed by the authority of the pandits who signed the first, and in answer to the question, 'Granted that in certain circumstances the evidence of a single witness can be proceeded upon, does this apply when only one of, for example, three witnesses can be seen to tell the truth?' The answer is, simply, no.

The great difficulty in ancient systems of law was to distinguish admissibility from cogency. Rules tending to warn the court against believing testimony, when it proceeded from classes of witnesses who could be presumed not to tell the truth, notwithstanding the solemn adjurations or oaths which they had to undergo prior to their depositions, easily became confused with rules based on other motives. Granted that the basic principle was to get at the truth, certain persons should not be put to the inconvenience, shame, or humiliation of testifying even in cases where they might speak the truth; and granted that to establish the plaintiff's or defendant's case was in any event difficult and lay on

the conscience of the court, some rules must be devised to ensure that any decision, which must disappoint some party and his connections, must be virtually inevitable. The English method, which subsequently became the Anglo-Indian, was to admit practically all adults as witnesses, and to decide on the evidence of one witness if necessary, provided the judge could make up his mind in complete freedom whether the testimony was, on balance of probabilities, credible. The native system tried to arrive at a not less unsatisfactory result by looking first at the number of witnesses, then their imparitality, and lastly their personal probity. The two opinions on our piece of paper relate to a thought-world which was on the point of disappearing.

This has a bearing on the date of the document. It was not until 1853 that (by Act XIX of that year) the Bengal Government enacted for the provinces then subject to it, that a party might give evidence in a suit on his own behalf, that no person should be incompetent to testify by reason of interest or relationship, and that husband and wife might give testimony for or against each other. Act XIX of 1837 had already provided that no one should be incompetent as a witness by reason of conviction for any offence. One result of these fairly well-known facts is that the Hindu law of evidence in civil suits between Hindus remained undisturbed by enactment until so late as 1837, and more substantially until 1853. A consolidating and amending statute for all India was passed in 1855 (Act II of that year), by sec. 28 of which it was provided that except for treason one witness 'who is entitled to full credit' should be sufficient for proof of any fact. This plainly for the first time repealed an outstanding rule of both Hindu and Muhammadan law. The present Indian law of evidence (Indian Evidence Act, 1872), much (at that time) in advance of English law on the subject, provided that no number of witnesses should be required to prove any fact (see sec. 134). There is no doubt but that until 1837 in one respect, and until 1853 in most the Hindu rules were the basic rules for civil procedure in suits between Hindus. The reason for this is simple: the scheme of 1772 and the Regulation of 1780 provided that 'in all suits regarding inheritance, succession, marriage, and caste, and other religious usages or institutions, the laws of the Koran with respect to Mohammedans, and those of the Shaster with respect to Gentoos, shall be invariably adhered to'. The section did not say that the indigenous learning should be sources of law: it said that the indigenous learning should *invariably be adhered to in suits*. This explains why W.H. Macnaghten and his father spent many pages on Hindu judicature and the Hindu law relating to witnesses. The junior Macnaghten explains (i, 1829, ch. 6) how three witnesses are required (p. 241), about incompetent witnesses (p. 245), and (p. 246) how 'by consent of both parties even one person of virtuous knowledge may be a witness' and further that one or *two* may function as witnesses by consent. At p. 246 he explains that in cases of violence every man may be a witness. In the pandits' *vyavasthā-s* which he reproduces in summary form (ii, 1828) he relates how a slave may not be witness for his master (an opinion of 1813, at p. 317), how a leper may not be a witness (1808, p. 319); and that in the case of a female the evidence of a single female might be admissible (1817, p. 319). Thus, the law appearing from the 1866 case of *R.v. Khyroollah*, to the effect that neither the English law, nor any of the indigenous laws was

per se binding on the Company's courts, was substantiated so far as it went, but we can be more accurate in saying that until 1837/1853 (depending on the topic) the Hindu rules remained substantially in force.

Our *vyavasthā* is the work of Bengalis, and we have hitherto been considering Bengal, Bihar and Orissa particularly. A movement to oust the indigenous laws from the scope of Evidence had commenced much earlier in Madras Presidency. The Faujdari Adalat expressed its abandonment of the Muslim law of evidence in criminal matters as early as 1829 (Arbuthnot's *Select Reports*, xxvii). By 1858 the Mufassil courts of that Presidency were governed by the English law of evidence (J.B.Norton, *Law of Evidence*, 1st ed., Madras, 1858, para. 23). The case of *Syed Ally v. Syed Kullee*, 19th Jan. 1813 (Strange's *Notes of Cases*, vol. 2, 25 at p. 35-6), already laid down that in the Supreme Court (Madras) in cases of contract and inheritance the English and not the 'native' rules of evidence would be followed. Something similar was laid down for Bengal in *Sreemutty Nobbocomary* v. *Goursoonder*, 24th June 1842 (Fulton's reports, vol. 1, 15), but, as I have said, the position in the Company's courts was at large even later than that date, hence the legislation to which I have alluded.

However, our present *vyavasthā* would not have been needed except at a period when the possibility of the court's relying upon a single witness was in serious doubt. The form of the *vyavasthā* has much to tell us. The court pandits operated normally in pairs, for two were appointed to each court. The questions put to them by the courts were written on the upper half of a piece of paper, leaving a space blank for a signed reply (Reg. IV of 1793, sec. xvi). Thus a *vyavasthā* on a single piece of paper without reference to a question and without any date (answers to a court had to be dated) fits, as I am suggesting, a special application, whether by the superior court or Council to, for example, the Registrar's office pandits, or to some others, at a time when it was alleged that some decree should be set aside for want of reliance upon admissible evidence, or, in the alternative, answers an application by some litigant, hoping that, fortified with such an opinion, he might have his case reviewed on the same basis. In view of the loose style of the *vyavasthā*, obviously intended for general instruction, I incline to the former explanation. It should not be impossible to trace back in the India Office Records an occasion when the Council (for example) (perhaps in the Revenue proceedings) could have needed such an opinion. It makes very little sense to imagine that such a question could have been asked except at a fairly early stage in the Europeans' judicial activity.

The names of the pandits might have been expected to afford substantial clues. Unfortunately they are not illuminating. We know the names of the Supreme Court pandits and some of the Sadr Diwani Adalat pandits for the 1820 period. Only isolated names have been noticed for the earlier periods. However, it is clear that Kāśinātha *could be* the Kāśinātha Tarkapancānana who is known to have been active in 1824. As against that we can see that his signature is already that of an old man. (This leaves out of account the Kāśinātha Tarkavāgis'a and Kāśinātha Tarkālaṃkāra, both of whom Ward says were active in 1817.) And his colleague Kāliśaṃkara, whose signature is also that of an old man, can very well be the same pandit of that name who functioned in 1773 in the

compiling of the *Setu*. This gives us reason to suspect that the -*nta* whose signature (the fourth) is damaged by the scorchmark, is Gauri-kānta, another of those compilers. If this is so Kāśinātha must be an earlier scholar of that name, and the *vyavasthā* could date from the 1790's. This I think, is very possible, but a date (?) 1790-1810 should take care of reasonable doubts on this score.

LAW IN LITIGATION

A study of Hindu law causes the mind to become inured to inconsistencies and contradictions, and encourages it to be quick to see distinctions and to split hairs. But in the early mediaeval period the anomalies were sustained in a less artificial and fictional manner, and the distinctions were plausible enough to have been sustained through centuries of oral and eventually documentary scholarship. In what follows numerous propositions will emerge which seem to tread uncomfortably upon each other's heels. A careful survey will show that Medh., like most of his contemporaries, was adept at reconciling divergent opinions and trends, and at minimising the logical faults of the system which the public, after all, needed.

We have seen that litigation, in the sense of appeal to law in conflicts occurring in society, took place not only in the royal courts (including courts held or sanctioned by grant from the sovereign) but also before tribunals of a customary character. The subject matter of litigation could be breach of civil law, of criminal law, or of social etiquette. The *dharmaśāstra* itself made no such distinctions, but it did carefully avoid giving prescriptions which would limit the judges' freedom in dealing with etiquette questions. The *dharmaśāstra* did not therefore give a complete code which covered all types of litigation. Manu did not do so, and therefore Medh. himself does not purport to do so, but many of his remarks, especially those *obiter*, reveal his understanding of the range of litigation.

We may deal first with civil litigation. The ruler is bound to supply means for resolution of the subjects' mutual disputes because one of his tasks is relief from oppression, just as the basis for his administration of what we should call criminal law is his duty to relieve the subjects from the pains they would suffer in the other world or worlds for their offences. Subjects fall into sin in their maltreatment of each other and in their offences against the king (e.g. non-payment of taxes) and if the king does not protect the subjects from sin he himself incurs sin, and it is understood that this consideration authorises him to take the initiative in the restricted class of criminal cases where he can start proceedings *suo motu*. Since hearing cases provides him with an income, the restraint referred to is a real one. In the actual hearing of cases three questions arise: does the law require the judge to act as umpire or inquistor, does the judge proceed according to a fixed and unchangeable procedure, and does the law applied to the facts as found out derive from the *śāstra*, from custom, from equity, or from some mixture of sources? Does the law itself lay down answers to these questions? Medh. is unusually frank and open on this subject, upon which the public must have been sensitive; since if the *śāstra* is an

optional guide or an incomplete guide the question remains whether it is a guide at all, and, if it is not, one cohesive factor in the common Hindu civilization disappears. In Medh.'s view the judge must act as inquisitor, and once he is seized of the case he must pursue it to its end, no matter what the witnesses say or fail to say or how the parties behave. It is perfectly true that compromise of an action at law may be the best solution, but the agreement of the parties cannot authorise the judge to depart from the established methods of arriving at a decision. In arriving at a decision on facts the judge must not be hampered by considerations of jurisprudence, however learned. A *smṛti* (such as Manu himself) may tend to fossilize the categories of facts, and this tendency must be resisted. The true state of facts of a given case must never be ignored because of any incompatibility with a *smṛti* text.

Litigants may often be disappointed with the result. Appeal to law is appeal to *dharma*, in the wide sense of that word. The function of the judge, which is never entirely immune from taint of sin (for no judgment can be perfect), must be approached as if it were the performance of a religious obligation. And yet the results are often far from what strict truth would require. Medh. frankly acknowledges this and claims that Manu did so too. The better cause may be lost through the factor of litigation, and yet it is a requirement of the sacred law that the decision be implemented. True, a review of a decision is possible in many cases: that which conflicts with law may be annulled, and, says Medh., fines may be doubled (there were fines payable even in civil cases).

The law to be applied to the facts as discovered by the court could achieve injustice unless it were plastic and supple, and yet undue suppleness would lead to instability and the collapse of the judicial system. The solution appears in the following manner: the first task was to determine whether the *smṛti* rules were barred by custom. Customs must be examined minutely, lest they be novel, or incongruous with the *śāstra*. Before incongruity is surmised the custom (if otherwise unimpeachable) must be compared with the *smṛti* which is alleged to be incongruous with it. If the *smṛti* is faultless it will take precedence. But *smṛti-s* can be faulted on a number of grounds. First a great many *smṛtis* in *vyavahāra* (litigation) contexts are based either *(i)* upon custom, or *(ii)* upon the author's preference in each case. In either case the proved custom will take precedence. A *laukika* (popular) rule will normally provide the rule for decision so long as *some śāstric* support for it can be found. But one must take care, since many *smṛti-s* which purport to make up the *śāstra* and themselves only reflexions of customary provisions (*vyavasthā-s*); and therefore of no independent authority. Thus it may come about that practical rules having no literal counterpart anywhere in *smṛti* may have to be applied. When however resort is felt inevitably to be to the *smṛti*, it does not follow that *smṛti* rules will supply the answer unaided by other sources of decision. Where *smṛtis* are markedly in variance, none of them is authoritative without more. When a *smṛti* appears in a context which is not perfectly appropriate to it, this affords a ground for ignoring it. And it is for these reasons that *smṛti* itself particularly lays down a scope for judicial discretion. Naturally, when the litigants are non-aryans, and not bound by the *śāstra* in any event, their customs cannot be disapproved as repugnant to the *śāstra*.

The judicial procedure itself is governed by *smṛti* rules. But the rules all subserve a practical (seen) purpose (see IV below) and are therefore subject to rational limitation and adjustment to meet the needs of the case. A certain number of these *smṛti-s* may be ignored entirely, for the following reason. *Smṛti* as we shall see, derives its authority from factors external to itself, such as the Veda or the behaviour of persons learned in the Veda. If there is no practical support for a *smṛti* rule, one is justified in supposing that it is a rule derived from the Veda, and therefore possessing spiritual compulsive power, which one neglects only at one's spiritual risk. But if the context is purely practical, and has nothing to do with action (*kārya*) in the sacrificial sense, as is plainly the case with questions that arise in the course of litigation, the *smṛti* is deprived of all support, and is not to be followed. Moreover, there is another reason why rules found in the *smṛti-s* should not hamper judicial procedure. The judicial function itself exists for the *rājya-sthiti*, namely the security of the state or kingdom, and it is for this reason that *artha-śāstra* (economical and political) considerations as well as the *dharam-śāstra* should be taken into account in that context. If the requirements of order and good government demand that *smṛti* provisions should be modified in practice, modification is authorised.

Subjects should not engage in litigation unless other means of resolving their difficulties have failed. When the king's criminal jurisdiction is invoked (which to this day is thought the most effective method of bringing pressure to bear on the opposite party) other considerations apply. The king is not authorised to compromise, or to sanction compromises by the aggrieved parties. Criminal penalties are better than Hell. *Daṇḍa*, the symbol of *dharma* and generic name for penalties of all kinds, is a quality of government having an almost religious mystique. Punishment produces invisible effects as well as its essential function of deterrence. *Dharma* requires rigour in administration of the criminal law, for the criminal's own benefit, apart from any other consideration. Yet, the punishment to be inflicted must be chosen by reference to other factors besides the *smṛti* text. Mere application of the written text will produce unjust punishments.

It follows from our survey both of criminal and civil law that knowledge of the *śāstra* is by no means the chief requirement. Indeed, before the king's court litigants need not expect to be judged according to strict *smṛti* rules. The court does not absolutely require perfect *smṛti*-knowledge. Procedure and evidence can be mastered by an intelligent person who does not have (and perhaps by reason of caste might not be entitled to have) recourse to the *śāstra* as laid down in the *smṛti-s*. This is an admission of an extraordinary character, introducing an element of reality into the jurisprudential scene which is all too rare in our *dharmaśāstra* literature.

LAW AS A SOCIAL REALITY

An even more surprising revelation is the acknowledgement by so eminent a scholar that, not only (as we have seen) may a properly conducted trial lead to unjust results, but also it may happen that in pursuance of his legal rights a litigant may properly incur censure. The *śāstra*, in his view, already contemplates the dicotomy well known to the

West, that what is lawful, in the sense that it may be successfully pursued in litigation, may be immoral, so that the successful litigant may become liable to spiritual or social penalties or both. This recognition of the split in the sacred law between the possible and the desirable is a sign of maturity which, one feels certain, the *smṛti-s* themselves cannot have anticipated. There is indeed a survival, even in Medh. himself, of a more ancient outlook. Outside the field of *vyavahāra* and in the field of pure social and spiritual sanction doubts may occur (as they constantly occur amongst orthodox Jews) as to cleanness, purification, and the like. The *śāstra* allows even one Brahman specialist to pronounce finally upon such question. How is he to determine? One should follow the decisions of cultured men (i.e. Brahmans living by customs inherited from a pure ancestry known to have preserved Vedic learning), for one may have faith that there can be no two opinions in matters of (such) *dharma*. Here we meet the apparently naive, but yet normal concept amongst *śāstri-s* that in a quandary (especially a quandary induced by divergent *smṛti-s*) final reconciliation is possible, in which all scholars can eventually be brought to agree.

The scene with which Medh. was familiar was one of infinite variety, yet the whole society, with all its castes and even tribes who claimed to have been Hinduized, sheltered under one jurisprudential umbrella. For centuries Brahmans, cultivating their ancestral usages, had served as models for other, less pure castes to follow. But one must accept the fact that the process of modelling was not far advanced, and where it was advanced at all was unevenly so. The *śāstra* itself seemed to acknowledge the incompatibility of what went on in the world with what was, apparently, subsumed by the *smṛti* rules. The *smṛti-s* set an impossible standard. Sleeping in the daytime was a sin and so was cow-killing. The public regarded the latter with abhorrence, but took no strong line with reference to the former. Yet, says Medh., repeated performance of either act would bring about degradation from caste, for the *smṛti* intends this. But, whatever the standard, on one was justified in pretending that it was met, and thus turning one's back on the facts of life. Marriage, the chief institution of the law, must be admitted and recognised, even though people married for motives, such as the receipt of large doweries, which the *smṛti* altogether ignored and would certainly have deplored.

In practice the public were constantly agitated by failures to conform to patterns of behaviour. If it came to a dispute and the law was appealed to, what had law to say? The basic conception accorded remarkably well with social habits. What made an act sinful, and therefore fit for an accusation tending towards penance or excommunication in default of performance of penance, was not the nature of the act when analysed by a rational man, but the fact that the act was prohibited. Killing is sinful, not because of the killing, but bacause of the prohibition. The reader will comment that this explains why, to judge from traditional Indian practice, robbery of a castefellow is reprehensible, while robbery of a non-castefellow is either non-reprehensible or even laudible. The actual terms of the śāstra give no countenance to any such proposition, for acts savouring of sinful attitudes of mind are there seen as sinful from the point of view of the owner of the mind, not so much by reference to the victim—but the presence of rules discriminating

in favour of classes of wrong does who have wronged members of lower castes goes far to show that such notions could, somehow, seek support even from the sacred text.

Outside the sphere of litigation the operation of the law is visible. A disobedient servant may lawfully be deprived of his wages, but he is also sinful, and must therefore clear himself by some penance. The system did not regard an offender as cleared merely because he had paid compensation; some penance (perhaps payable to the caste itself) was also required. A criminal penalty however, as we have seen, had the effect of being also a penance.

A great sanction, which Medh. elaborates in numerous places, is the force of public opinion. By 'public' of course, is meant not the whole body of citizens or villagers but the caste which, for the time being, can effectively discipline its members. The subject of occupations is something of a test. The *śāstra* condemns those who deviate from the occupations laid down in the *smṛti-s*. A medieval commentator is likely to ask himself how much reality may be attributed to these rules, which, if they were to be taken seriously, whould give a perpetual income to the authorized recipients of penance-money. Medh. emphasises that no occupation should be taken up, even though distinctly sanctioned by the *śāstra*, if the result would be blamed by the world. It is obvious that this can work both ways and that the authorised and indeed proper occupations could not be returned to if the community objected. Family usage may prevent a person from taking up an occupation, whether or not the *śāstra* also prohibits it. For it is a toka-vyavahāra which one observes; one must avoid unpopularity. For a *smṛti* tells us that what is *loka-vidviṣṭa* (hated by the world) is *asvargya;* it does not lead to heaven, which means no more nor less than this, that, whether one is permitted to do it by the *śāstra* or not, social (and possibly spiritual) penalties will follow from availing oneself of the facility. What appears to be a *smṛti* of unascertained authority is cited for the rule that it is wrong to incur popular disapprobation. That this opens the door to social pressures not contemplated in so many words by the *śāstra* is obvious.

Yet the author does not allow the *smṛti* to convert offenders into outcastes with undue expedition. Manu V. 19 does not mean that a man becomes an outcaste by virtue of his offence (says Medh.), but outcasting follows only when he refuses to perform penance for the offence; unless one prefers to say that what is intended is that the offender shall perform the penance which one who had been outcasted would have to perform in order to obtain reinstatement.

The *dharma* encirclement of Indian (Hindu) society is not to be forsaken, however. Those who are outside the pale of *dharma* are not capable of entering society and claiming a purity which on other grounds some Hindus could claim by virtue of their function. Non-Hindus could by no means escape from the law's ban on social intercourse. The dwellers on the very fringe of Hindu society, the scavengers, Chaṇḍālas, had not yet reached the stage when their very shadow conferred impurity, but Medh. evidently does not allow their habits, standards, or feelings any say in deciding what the law requires. So far as the pure castes are concerned, their customs regarding purity are themselves

authoritative as *samācāra* (usage) and must be observed, whether or not positive support for the customs could be found in any *smṛti*.

On this basis one would suppose that popular religious usages—whether or not these were recognised or recorded in *smṛti* or Veda—would come within the concept of law. On the contrary, though the law in litigation might recognise that such rituals were in use, sacrifices which did not conform to *śāstric* precepts were to be condemned, for the *śāstric* material on the duties towards the gods and the unseen world could not be argued away or displaced by evidence of custom as such.

M

MAHANIRVANA-TÀNTRA

The *Mahānirvāṇa-tantra* is very well known as a religious treatise, especially revered in Bengal. It is described as "one of the original and most revered *tantras*"), and readers will be astonished to learn that, if it is a fabrication of any kind, it is a juridical fabrication. Naturally it is much more than this. It is a work on a vast scale in which an old religious tendency is refurbished and re-presented comprehensively, with reformist motives. The large number of editions, both in the original Sanskrit and in Bengali and English translations, which has appeared is an additional proof of its popularity. It would be impossible to contend that the purchasers of these books had any interest in the legal as opposed to the religious elements. But the whole is made up of its parts, and it would be incorrect to appraise the MNT without scrutinising its highly deceptive legal portions.

In an important article Lallanji Gopal showed that there was every likelihood that the *Sukraniti*, which was until then supposed to be an ancient Hindu treatise on statecraft, was in fact a fabrication of the first half of the nineteenth century). It is unlikely, if not impossible, that his contention will be refuted: the only important refinement we can look for is a more precise location of the work in place and time. In an earlier article) the present writer discussed a number of works which were certainly, and others which were possibly, written in response to British suggestion or request. The light which this throws upon the cultural interactions of the two civilisations is somewhat novel. The picture could not be completed without a discussion of the MNT, and the writer regrets that he did not suspect its correct historical location at that time. To his chagrin he finds that he discussed the MNT in connection with the topic of pre-emption, realising that the work stood apart from the *dharmaśāstra* tradition represented in earlier treatises of an orthodox description, but failing to grasp why this was so.

This discussion must go further than the previous article in two respects. The MNT belongs to the border-land between the pre-British and the settled British system of judicial administration, and therefore throws a lot of light on the hopes and fears of the

native population at that time and the capacity of the indigenous civilisation to react to them. In a further respect the MNT exemplifies a traditional quality of the Hindu mind, which must be probed. A psychological point of general interest arises. Credulity and make-believe have a special place in Indian intellectual, or para-intellectual life. It is by no means certain that an alteration in the content of fairy-tales told to Hindu children will remove the tendency towards these manifestations for the future. However that may be, it will be found that we cannot discuss our present 'fabrication' without approaching this Indian phenomenon more than once. History often repeats itself, and a similar folly in the recent past may throw light on a certain intellectual inadequacy in an unexpected quarter, a century before.

MAHĀNIRVĀṆA-TANTRA TEXT

The work exists in very few manuscripts. Every one of them is on paper in modern Bengali script. The manuscript once located inOudh (Th. Aufrecht, *Catalogus Catalogorum*, I. 298) is no longer available. As for the rest see Rājendralāl Mitra, *Notices of Sanskrit Manuscripts* (Calcutta, 1871), p. 159, no. 289; in the possession then of Jatindra Mohan Tagore of Calcutta (son of P. C.Tagore, a young friend of Rāja Rāmmohun Roy); without commentary. Sastri and Gui (above), pp. 53—57; no commentary. Haraprasāda Shāstri, *Descriptive Catalogue of Sanskrit Mss. in the Collection of the Royal Asiatic Society of Bengal*, ed. Chintāharaṇ Chakravarti, vol. 8, pt. 1 (Calcutta, 1939), p. 229, no. 6039. A Avalon says (Introduction to his edition of the Text of the MNT), over the dating "Oxford, 21st September, 1928", that the manuscript which was with him contained text and commentary, and was throughout in Rammohun Roy's handwriting (p.viii). How are we to account for small discrepancies between his text and the text of which Rammohun printed fragments? And where is that copy now? N.C. Sainsbury, Keeper of Oriental Books, Bodleian Library, Oxford, informed the present writer on 11th May, 1966 that there was no trace of any Sanskrit manuscript having been given or bequeathed by Sir John Woodroffe (see pp. 174—175 below) to the Bodleian. An appeal to prof. V. Rāghavan of Madras for information on further copies of the MNT produced no further evidence. The India Office Library possesses no material relevant to this enquiry, but the Librarian told the present writer that P.N. Mukhopadhyaya, one of Woodroffe's collaborators, was alive as recently as 1963—but he has not been traced. Manuscripts with the bare text of the verses are the majority (if the word 'majority' has any meaning where the total is so small) and it is not clear whether the text with the commentary of Hariharānanda Bhārati (or Hariharānanda Tirthasvāmî) is preserved in more than two manuscripts. This speaks at once for the work's being modern, or rather, very moern. No trace of it is found in any work dealing with tantric religion prior to the eighteenth century). For the opinion of Kāṇe, see previous note. The modernity of the work is recognised by Chintāharaṇ Chakravarti, *Tantras....*(Calcutta, 1963), 24, and previously by M. Winternitz, *History of Indian Literature*, vol. 1 (Calcutta, 1927), 592—598. It is said to be mentioned in the *Mahāsiddhisāra*, an "old" copy of which belonged to Rādhākānt Deb (1783—1867), the

bibliophile contemporary of Rammohun who opposed him in matters of religion. It is said to be quoted in the *Prāṇatoṣaṇilatā*, a modern tantric *nibandha*. The origin of the former work is unknown. The MNT is barely mentioned by M. Monier-Williams, *Indian Wisdom* (London, 1893), p. 525. Students of *tantras* either ignore this work), or declare that its peculiarities do not quite fit it for the Bengali climate of thought), in which it must obviously be placed historically and geographically. First published with commentary by Adi Brāhma Samāj in 1876 by Anandachandra Vidyāvāgis'a who used three Mss., those at the library of the Samāj, of Durādāsa Chaudhuri, and of the library of Rāmmohun Roy. The text with Hindi translation: Jwala P. Miśra (Bombay, 1896). The text with a commentary attributed to Sankarāchārya (!) was printed by the Daṇḍa Sabhā of Maṇikarṇaka Ghāṭ, Banāras, in 1886. The text with the commentary of Kṛiṣṇa Gopāla Bhakta appeared in (?) 1886, 1888. The text with a Ḅengali translation: by Jaganmohan Tarkālankāra (1886; 3rd edn. 1914); by Shri Prasanna Kumāra Sāstri in 1888, also 1896; by Gopāladāsa Mukhopādhyāya in 1901, 1927 and 1928. Pt. Jivānanda Vidyāsāgara's edition of text and commentary (of Hariharānanda) without translation was published at Calcutta in 1884 (the writer saw a presentation copy at Adyār). The text and commentary were edited by A. Avalon (Tantrik Texts Ser., vol. 13) from Madras in 1929, reissued with translation in 1953. See P. N. Nātha and J.B. Chaudhuri, ed. C.J. Napier, *Catalogue of the India Office Library*, vol. 2, pt. 1 *Sanskrit Books*, sec. 3, pp. 1521—3.

It has been printed with and without commentary and in Bengali translation many times: and several rumoured editions have not been traced. The popularity of the work is shared by its two English translation. That by Manmatha Nāth Datta has been stigmatised as insufficient by the author (or supposed author) of the second, Arthur Avalon. Avalon referred to his "informants" and "Indian Pandits under my general editorship." Occasional indianisms of language which eluded his editorial eye still attest their part in the undertaking. Avalon's edition of the text with the commentary has been printed at least twice, and his translation has gone into so many editions that Ganesh & Co. (Madras) who publish Avalon's many works on tantrism, evidently have a stable market. The popularity may in some measure be accounted for by the subtle appeal that the work has to the twin strands of modern Hindu thought, the mystic and antiquarian on the one hand and the yearning for cosmopolitan values on the other.

The *tantra* is regarded as a religious work, and purports to have been composed by the god Siva. It is in terms addressed to the goddess Pārvati. There is no trace of the author's identity (naturally), for that would have interfered with the illusion: so that the work is anonymous. At one time it was believed that the MNT was written by Rāja Rāmmohun Roy or by Hariharānanda Bhārati himself. The first is highly imporbable, as we shall see, and the second is unlikely, since in one place at least he seems not to have understood his text. But, as we shall also see, it is very probable that the author's work's emergence was owed to Hariharānanda.

Our special task is to examine the *tantra* with especial reference to the legal portions, for without these we cannot detemine the mental climate in which the author wrote, and

so we cannot establish its approximate date or conjecture how it came to be written. Having drawn conclusions from this material we can determine inferentially the relations towards this book on the part of Hariharānanda, of Rāmmohun Roy, of the Brāhma Samāj (which accorded the MNT considerable importance), and lastly of Arthur Avalon. This also is necessary, as it is not sufficient to establish how and where and when the book came to be written, but we must understand how it came to light, why it came into the prominence it did, and why, in the legal sphere, it did not come into greater prominence.

MAHĀNIRVĀṆA-TRANTRA AND CASTE

It is generally known that Hinduism traditionally concerned itself with *varṇa* and *āśrama*, that is to say with the hierarchical classification (or, commonly, 'caste') in which the individual was born, and the 'stage of life' which he occupied at different periods of his life. In regard to both he was taught traditionally the merit or otherwise of observances, occupations, actions and abstentions, both those of a strictly religious nature and those with an ethical or moral significance. Contact with persons of other castes, the relationships which are allowed with them, the relations between the castes themselves in religious and purely secular contexts: all these were within the purview of the *dharma-śāstra* (hereinafter called the *śāstra*), the traditional Hindu 'science of righteousness'. This last is evidenced in an abundance of native literature, not to speak of discussions by non-Indians. It is generally possible to tell what the *śāstra* teaches on almost every problem that can arise in life.

The widest variety of opinions and psychological needs, felt over two millennia at the least, has provided in the *śāstra* itself at various levels so wide a latitude for personal behaviour, always within the framework of caste, that until European influence began to be felt widely the weight of śāstric sanction was not felt to be more of a hindrance than a privilege. The rise of European power produced reactions. It is a fact that Indians have a special, and perhaps unique faculty for adjusting themselves to foreign ways without themselves ceasing to be characteristically Indian. Acculturations are known the world over, but the ease with which Indians—for all their distinctive and pervasive civilization—from at least as early as the time of Alexander the Great, picked up foreign languages and became masters of foreign ideas about which they were curious, whilst still remaining nothing other than Indians, is not rivalled anywhere. The choice between assimilation or fossilization (as elsewhere) has not apparently presented itself. The characteristic Indian response to a new idea is not that it is wrong, but that Indian teachers must have said the same, or virtually the same, already. Outrageously novel notions are received in this constructively tolerant spirit, provided they arrive from a prestige-bearing quarter. The assumption is that Hindu learning and experience is exhaustive, and a new idea is merely one which was fallen temporarily out of view. It will then be re-expressed in Indian terms, perhaps distorted in the process, but none the less effectively absorbed. The acceptance of the Common Law with so many of its technicalities into India is only a single, though a very striking example of this process. One might have expected that

in order to be an expert practitioner in this very foreign and esoteric science one must forsake and repudiate traditional Hindu learning: but on the contrary many of the most successful practitioners at the Indian Bars have been brought up in the traditional way and have been great Sanskrit scholars in their own right. The late K.V. Venkatasubramania Iyer was not only the best Hindu law scholar of his day but taught the Madras High Court constitutional law, the newest and most foreign of legal manifestations India has known. And he was merely on outstanding recent example of an intellectual type. These general reflections have an intimate bearing on the MNT, which, whilst being extremely popular and highly revered, contains ideas unique in Hinduism.

Caste seems to be the pivot of this paradox. Hindus have long been aware of the absence of *varṇa* outside India, and must have sought to justify caste to themselves. Many of the elaborate native expositions of the *varṇa*-theory may well owe their existence to this self-consciousness. When first Muslims and then Europeans ruled Bengal and gave promotion and lucrative appointments to Hindus of whom they approved, it could not be for long doubtful whether Hindu social and political theory would come under critical examination from Hindus aiming at desirable employment. Both Islam and Christianity being proselytising religions, amny Hindus were brought to face the alleged merits of monotheim and a caste-less (or apparently caste-less) society: even if they had not been invited to do so by missionaries, their natural curiosity would have inspired them to investigate the reasons, if any, for the non-Hindu *dharmas*. The natural reaction would be to make a choice: either a non-Hindu *dharma* must be rejected because the alleged justification did not in fact support the practice, or because it could not be accommodated with prevailing Hindu concepts which already occupied the field; or, on the other hand, the justification being non-repugnant to Hinduism, the foreign *dharma* could be added to the spectrum of Hindu behaviours. A great help in this process was the natural, innate, ambivalence towards caste, especially in some areas of India where caste seems never to have had a firm hold, where Buddhism lingered long, and where in some senses and for some purposes people were anxious to pretend that it did not exist. An exaggerated respect for Brahmins (sometimes addressed as *devatā*, 'deity', not always in fun?), and a desire to creep out from under the caste system, might well reside in the same head. Likewise tantric religion, which consists fundamentally of magical practices undertaken under the impression that worship of, for example, the goddess Kāli, in esoteric ways would bring supernatural benefits to the worshipper, sought to supply to Brahmins and non-Brahmins alike a religious experience in which horror and awe might be combined, and in which the appetite for the marvellous and the secret, hitherto confined to Brahmins trained in the laborious methods known only to the orthodox, could be spread amongst persons whose only link was a common ritual. A boost was given to tantric performances and literature by the dominance of the Muslims, who possessed common rituals as, apart from tantrism, Hinduism did not; and the coming of Christianity to Bengal will have had an even greater effect. The common rituals of the sects of Christianity were much more elaborate and had, especially in the case of Roman Catholics, a strongly mystical and awesome element.

On this we may dwell for a moment. The drinking of spirits and wines was until the arrival of Europeans the privilege of the very lowest classes of Hindus, with the special exception of the numerically insignificant princely caste. In Bengal the unorthodox ways of the Punjab and Sind will have had no effect. The Brahmin ethic which still remained the dominant ethic of Bengali Hindu society, eschewed liquor. Islam purported to reject wine. Christians believed that drinking wine and eating flesh in the shape of bread, properly consecrated, was a great communion with the Divine. Persons of all sorts, once admitted to the church, could and should partake of this communion. From a Hindu point of view the horried aspects of this act might be its chief virtues, provided one saw them in a tantric light. The things hated by orthodox Hinduism turned up in 'left-handed' worship by sects meeting in secret: eating meat, drinking liquor, committing incest. Tantrism had made these psychological aberrations almost respectable.

To the three otherwise reprobated acts commencing with the syllable *ma* known to older tantrism the MNT added two more, and we have the *pañca-makāra*, the five (otherwise questionable) entities commencing with *ma*, in which the tantric adept was entitled and expected to indulge during the ritual. Some of the curiosities of the MNT are most easily explained if one assumes an attempt by the author to admit into relatively old tantric usages, such as are found in the *Kulārṇava-tantra*, notions derived from a comparative study of Christian, especially Roman Catholic, doctrine. The priest, the consecration of elements, the partaking of elements after initiation, and in particular the notion of a wedding which is a religious communion as well as or indeed rather than a carnal copulation, all appear in this *tantra*. The effect is, like so much Hindu teaching of the nineteenth and twentieth centuries, not excluding the Hindu contribution (at times heavy) to the Theosophical Society's work, to draw what appears to be the foundation out from under the feet of the rival religion, leaving it with no exclusive merits which might claim converts from Hinduism. The present writer is impressed by the indebtedness of the MNT to Catholic Christianity, especailly when we read that a *kula-sannyāsi or avadhūta* (the *kaula* or tantric priest: *avadhūta* means literally 'one who has shaken off, repudiated', 'a philosopher') can make Yavanas (i.e. even Muslims) pure (XIV. 177): in other words the merits of what corresponds to baptism belong to tantric Hinduism in no less an amplitude than to Christianity—for if a Muslim can be initiated a *fortiori* a Christian can be; that a *kaula* teacher must initiate a Caṇḍāla (out-caste) or a Yavana who approaches him with a prayer for admission to the sect (XIV. 187); and that men of all the different *dharmas* in the world (thus explicitly including Christians) can be *kaulas* (ibid., 189); and when we note the mystic communion which all these people of different races and castes can enjoy together in common eating (III. 76—82)—a thing otherwise abhorrent to orthodox Hinduism. The great merits of Islam and Christianity, viz the absence of caste and the presence of communion, are no longer their peculiar gifts: Hinduism possesses them in full measure within the rather doubtful sphere of tantrism.

Nor is the matter left there. Caste and sect are often similar notions and sometimes popularly synonymous. The identity of the caste is often detected from the deity or deities

worshipped in common. If one intends to abolish caste, whether out of desire to imitate or excel non-Hindus or from political motives, one automatically emphasises a monotheistic approach: the deities are in reality all one. The MNT does exactly this. The worship to be undertaken by the *kaula*, the member of this sect which is to be open to people of all religions, is that of Brahma, a deity who seldom plays in traditional Hinduism the role of a *devatā* for the purpose of *pūjā*. It is quite justifiable to assert that the *tantra* is devoted to the worship of the Supreme Being and that the polytheistic traces, which remain numerous throughout the work, as well as the heaps of 'mumbo-jumbo' which one expects to find in any tantric work, are superfluities which can be ignored if one wishes. The work is evidence that one very learned Sanskrit scholar believed that monotheism and a casteless society belonged to Hinduism and that the god Siva could be believed to have taught the details to the goddess Pārvati. These details imitate the range of the *dharma-śāstra*, with initiation, worship, class occupations, and installation of deities, the special rituals of the *kaulas' chakra* (or congregation under the direction of the *avadhūta*), and, last but not least, law.

The legal element in the *tantra* is very curious. First of all it is ample and more extensive in scope than genuine *śāstric* works allows; next it is spread throughout the work in a manner hostile to any suggestion that the legal provisions are interpolations. Further, the author expected the religious sanction attributed to the work as a whole to operate in a śāstric fashion upon the conscience of the king. The occupations of the *varṇas* are by no means missing from this treatise, because the social value of caste is not forfeited while the relgious merit of castelessness is being introduced. As a result the king is expected to do his duty of protecting the people exactly as under the orthodox scheme. The author thus depicts the god Siva instructing kings to administer law according to his directions: and it is the relgious sanction which is operative. The 'king' whom the author has in mind cannot for long remain in doubt. The author must have been a Bengali—there is no evidence suggesting that he was a non-Bengali: the work did not exist while Hindus exercised royal powers over more than relatively small fragments of Bengal. The author must have wanted, therefore, to provide guidance for Muslim or European administrators. Which? This we must try to establish.

MAHĀNIRVĀṆA-TANTRA'S LEGAL PROVISIONS

The legal portions of the *tantra* can be classified into three categories: (1) those more or less compatible with the *śāstra*, though couched in language which an adept in the *śāstra* might not have chosen (these it is neither convenient nor necessary to discuss); (2) those that are foreign to the *śāstra*; finally (3) those which are not merely foreign but also evidently compatible with English law or legal ideas, whether in tone, origin, or even language.

It will be convenient to deal first with those which are foreign to the *śāstra*. This is easily detected, since the rules of the *śāstra* may be found out in MM. Dr. P. V. Kāṇe's *History of Dhamaśāstra*, which, though in English, is copiously supplied with references

to the original Sanskrit. Another useful work is MM. Dr. Sir Gangānātha Jhā's *Hindu Law in its Sources*. Foreignness to the *śāstra* may take various forms. First, the rule as expressed may have no counterpart in any *śāstric* text; next, though some counterpart may be found, the approach and language reveal an independent outlook, a different origin for the idea expressed. The last, and perhaps most important distinction is where the rule appears to be śāstric in style and approach, but has a significant variation, as if to operate as an amendment of the *śāstra*. It will not be convenient to subdivide the material exactly in accordance with these differences, partly because the categories overlap, and partly because those who wish to compare the original sources would find it advantageous to check the miscellaneous examples in the order in which they occur in the work.

A. Rules foreign to the *śāstra*

The two great spheres of differences between the MNT and the *śāstra* are marriage and inheritance. It will be noticed at once that these are the two main spheres of Anglo-Hindu law as first defined by the celebrated regulation of 1772. That regulation indicated that the law of the *śāstra* should be applied to Hindus, but it did not indicate precisely what texts were to be consulted—nor indeed could such a provision have been made with any hope of success, even if many of the East India Company's officials at that time had comprehended what was meant. The MNT's attention to these two topics could be read as an attempt to make up for the diffusencess and lack of clarity in the genuine *śāstric* material.

We may commence with VIII. 150—1 (numbered 151—2 in the translation of A. Avalon.

Sarve varṇāḥ sva-sva-varṇair brāhmodvāhaṃ tathā śanam
kurviran bhairvavi-cakrāt tattva-cakrād rte śive.
ubhayatra maheśāni śaivodvāha prakirttitaḥ
tathā' dāne ca pāne ca varṇa-bhedo na vidyate.

This Avalon translates as follows: "Except when in the Bhairavichakra or Tattva-chakra, persons of all castes should marry in their caste according to the Brāhma form, and should eat with their own caste people. O Great Queen! in these two circles, however, marriage in the Shaiva form is ordained, and as regards eating and drinking no caste distinction exists." It is important to recognise at the outset that the MNT, admitting that sexual intercourse is a feature of tantric ritual, speaks of *udvāha*, "marriage", and gives us to understand that a woman (presumably an unmarried woman or a widow) with whom intercourse is had, subsequent to the ceremony to be described, is wife to the man who enjoys here, whether or not he already has or had a caste wife. The Śaiva marriage, which was an abortive attempt to reform the Hindu law of marriage from within, in partial imitation of Muslim and Christian freedom to contract marriages outside the

religion, is thus seen as a development of the existing tantric ritual or orgy in which intercourse without any question of marriage played some role. The next relevant text is too long to set out here at length, seeing that it occupies IX. 267 to 284 in A valon's text, that is to say IX. 266—283 of Jivānanda's text. Avalon's translation is to be found at his pp. 302—304.

The verses follow a description of a Brāhma marriage which has an orthodox or śāstric air about it, and form the climax of book IX. But they are in some kind of contrast to the Brāhma marriage, and since the rules follow the former and are at the climax the reader is left with the impression that this innovation (totally unknown to the *śāstra*) is more important to the author than the material which introduces it. The content of the passage may be summarised thus: having said that another Brāhma marriage should not be undertaken without the permission of the first Brāhma wife (266), the author adds rather abruptly, "if the children of the Brāhma wife or any of her family (*vaṃśa*) be living the children of the Saiva wife shall not inhert" (267). They are however entitled to food and clothing and the heir is bound to maintain the Saiva wife. There are two Saiva marriages: one is terminated with the *chakra* (the relationship ends—one hopes—when the congregation disperses), while the other is lifelong (this was the principal innovation, evidently) (269). The marriage is arrived at *by mutual consent* (*parasparecchayā*) and is performed by the male (called here *vira*). But he must first obtain the consent of the assembled congregation (*anumanyatām*) *271). He then asks the woman to accept him as husband (*pati-bhāvena vṛṇu*) (273). The presiding priest utters a *mantra* invoking the protection of the tantric deities (276) and the congregation say Amen (*svasti*). The priest spinkles the couple with wine or sacred water. They bow to him and then "carefully carry out whatever they have promised" (278). The author says that in Śaiva marriage there are no restrictions of caste or age, but the woman must have no husband and not be within the prohibited degrees (this is evidently intended to lay a foundation for a respectable marriage) (279). But if this Śaiva wife has a menstrual period thereafter, the husband, if he desired a son, may abandon her (*tyajet*). The offspring of a Śaiva marriage is of the same caste as the mother should she be of the lower caste, but if the order of castes is reversed he has the status of *sāmānya* ('equal', 'commoner'?). Such sons would have no status in the funeral rites under the *śāstra*; but since the *kaulas*, or tantric adepts, have allowed the marriage, naturally from their point of view the issue are legitimate: therefore at a time when a legitimate son would according to the *śāstra* perform orthodox rituals, the Śaiva son must feast the *kaulas* only (and not Brahmins, *qua* Brahmins) (282).

The general tone of the MNT on sexual matters is puritical. The author evidently hopes to elevate his Śaiva marriage into a respectable institution, a means of liberalising Hindu society, providing tantrism itself becomes more respectable as well as more widely patronised, and this latter could certainly be hastened if tantrism were to be cleansed of merely libidinous elements. It is important to note that at 283—4 the author attaches religious sanction both to the desire for intercourse and to the *śāiva-dharma*, an expression which means both the laws promulgated (here) by the god Siva, and the system of *śaiva* (i.e. Siva's) marriage just set out. The tendency is confirmed by a verse in the section

dealing with sexual misbehaviour (XI. 46):

pariṇitās tu yā nāryo brāhmair vā śaiva-vartmabhiḥ
tā eva dārā vijneyā anyāḥ sarvāḥ para-striyaḥ.

Avalon translates (p. 346): "A man should consider as wife only that woman who has been married to him according to the Brāhma or Shaiva form. All other women are the wives of others." It is a sin to look lustfully on the wife of another (47).

A further statement that the children of a Śaiva marriage are not to inherit in the presence of either issue of a Brāhma marriage or close relatives (*sapiṇdas*) of the deceased's father or mother is followed by the rule that the Śaiva wife and children are entitled to maintenance. To confirm the married status of this woman he continues with a rule (XII. 60) that she cannot look to her father or other relations for her maintenance: her Śaiva husband must support her, provided she behaves herself. "Therefore, the father who marries his well-born daughter according to Śhaiva rites by reason of anger or covetousness will be despised of men (61)" (Avalon, p. 368). But the issue of the Śaiva marriage inherit before all remote relations and strangers (62). Thus the novel institution is settled into the law not merely of marriage but, quite practically, those of maintenance and inheritance as well. The warning not to give away a daughter in the Śaiva form without due reason (for the Brāhma form will entitle the girl to ornaments and other prestige-bearing expenditure, whereas the Śaiva form avoids all the conspicuous consumption dear to the Hindu) is supported by a further rule (at XII. 125) that an only daughter should not be given away in this form, and it is possible to read the verse in such a way as to include a prohibition of a man who has one wife giving away that wife in a Śaiva marriage ceremony (Avalon, p. 376).

The inheritance provisions of the MNT have two characteristics that mark them out from all śāstric works. First the detail is very elaborate. It is far more explicit than would be required in a native law book. The explicit provisions of the *Vivādārṇava-setu* (1773 to 1775) are a rough parallel, and this is very significant. Secondly, the language is markedly un-śāstric. Words occur which are unknown to the *śāstra*, and which are evidently translations into Sanskrit of technical English expressions. The passages in question are XII. 19, 21, 25, 26—28, 30—40, 42—63. A summary will serve our purpose. A son's son is entitled to the property rather than a wife or a father (this would be correct in śāstric law) 'by reason of his being a descendant' (*adhastāj janma-gauravāt*, literally, because of the importance of downward, or lower, birth). This extraordinary expression (Avalon, p. 364) betrays not so much the hand of the novice as that of one who intends to communicate Hindu ideas in a foreign diction (though the medium is Sanskrit). Avalon's note to this verse (XII. 19) shows no sign of his having grasped how strange the expression is in view of the fact that Hindu law is well equipped with discussions of inheritance and never contemplates this way of putting it. He says "property primarily descends", unaware that the metaphor of *descent*, so well embedded in English legal language, is by no means

universal. There is a privilege for males (21) and that is why a grandson will exclude daughters, though they are very near. There is a definition of *stridhanam* (woman's peculiar property), and we are told that all of this passes to the *svāmi* (*svāmi* need not mean husband here) and "then" (presumably in his absence) the nearest will take here esate adha *ūrdhva-kramād*, "according to the order of down and up", or rather, "by reason of the going down or up", i.e., literally, "according to descent and ascent". The classical definition, of Kātyāyana, lists what is given before the nuptial fire (*adhyagni*), at the time of the procession to the bridegroom's house (*adhyāvahanika*), given by the father or mother-in-law, and when showing reverence to elders (*priti-datta*), *śulka*, and post-nuptial gifts from the family of the husband or her own kingsmen (*anvādheya*). *Kāṇe*, mentions only gifts from the father or father-in-law, etc., and whatever is earned by her personal efforts—which Kātyāyana and the other *smṛitis* actually exclude from the definition of *stridhanam*.

This is a very comical attempt to translate an English portmanteau phrase. If an English student of Sanskrit had been trying to turn an English legal idea into that language he might have produced a similar result. The inheritance of the widow depends on her good behaviour in the care of her husband's family. Even suspicion of misbehaviour will prevent her inheriting: this is emphatically contrary to śāstric law and naturally to Anglo-Hindu jurisprudence. There is a very extraordinary expression at verse 30. It is an endeavour to explain what in subsequent periods of Anglo-Hindu law was worked out in detail, but was naturally obscure on the footing of the texts of the Bengal school (usually called the Dāyabhāga school) of Hindu law. Avalon translates (p. 365): "If the woman who inherits her husband's property dies leaving daughters, then the property is taken to have gone back to the husband and from him to the daughter." Correctly he should have written "a daughter" for "daughters", but the slip is trivial. The property goes to the daughter, says the text literally, *punaḥ svāmi-padaṃ gatvā*, i.e. "having reverted to the husband (owner)". Is it assumed that the husband is already dead, but the property was originally his? If the widow took it subject to what is now called the "limited estate", one of the incidents thereof was that on the widow's death (or surrender) the next heir of the last male holder (*svāmi*) took it as if he had died when the *widow* died. Verse 31 explains further: "So property which has gone to the widow of a son during the lifetime of a maiden (daughter), on her (the widow's) death it must revert to the "owner" (here *svāmi* means the last male holder's father and from (her) father-in-law it will go to his daughter."

This is incorrect Dāyabhāga law put in very unconventional language. Nowadays we should express the thing by saying that if *P* died leaving a son *S* and a son's wife *SW* and a daughter *D*, and then *S* died leaving *SW* and *D*, and then SW died, the estate which had formerly belonged to P would not pass to the personal heirs of *SW* but would pass to the nearest heir of *S* as if *S* had died when SW died and the nearest heir of *S* must be sought through *P*, his father: but we should not choose *D* as the reversionary heir, because *D* is not the nearest heir of *S*, as the sister is never an heir at Dāyabhāga law. Thus the author of the MNT, seeking to combine the native notion of the limited estate

with a foreign notion of nearness of blood and the search for the descendant of the previous owner (see below), puts what is in fact an innovation into language at least comprehensible to a foreigner. In verse 32 we read "Likewise, property which has passed to a mother in the lifetime of the father's father (namely the mother's father-in-law) must, on her death, go to her father-in-law by reason of her son, by reason of her husband." In other words the last male holder's (her dead son's) line's nearest representative, namely her husband's father, must take the property. This would be correct at Dāyabhāga law. The rules which follow bear out both points, namely the effect of the limited estate and the claim of the reversioner, and the concept of "descent", etc. At v. 35 we are told "In the absence of descendants (*adhastanānām virahāt*), when the estate cannot descend (literally, 'go down'), then it must ascend (literally, 'go up') only by means of him through whom a descendant was reached". Avalon's translation seems incorrect. The property, it seems, goes by the way it came, and the illustrations bear this out. Many intricate questions of inheritance are now handled, and there is a general conformity with the Dāyabhāga law. The way in which the rules are set out has nothing in common with conventional Dāyabhāga exposition. But striking divergences from that law are found. Half-brothers and full brothers inherit together: v. 39. Daughters' sons cannot inherit in the lifetime of daughters (which is correct), but daughters inherit after sons (40—41). *Stridhanam* (cf. v. 25) inherited from others than the husband reverts to the source from whence it came (42): this seems new. There is an odd phrase at 43; *preta-labdha-dhana*, "property obtained from a dead man (i.e. 'deceased')". Verse 46 has much interest:

pitṛvyāt sannikarṣe 'tra tulyau bhrātṛ-pitāmahau
dhanaṃ pitṛ-padam gatvā prayātur bhrātaraṃ bhajet.

It is perfectly true that, as he says, "in point of propinquity both brother and father's father are to be preferred to the fathers's brother". From the western standpoint the *number* of degrees is the same in the case of the brother and the grandfather, whereas in the case of the uncle three steps have to be taken. He continues, "the property, having reverted to the father should resort to the deceased's brother". The word for 'decased' is a neologism, *prayātṛ*, a literal translation surely of 'predecessor', much better than the *preta* noticed above. This conception of property passing *through* relations (whether living or dead) fits English concepts of descent of real property, but is quite foreign to Hindu law as generally understood. The MNT emphatically explains a conception of inheritance totally foreign to Hindu law, yet congruent with English notions of descent of land. These were peculiar even in Europe. The basic doctrine was *haereditas nunquam ascendit*. The propositus might die leaving a *feudum maternum* and/or a *feudum paternum*. Thus if the propositus died without issue of his own it must pas *through* the intervening ancestor to the issue of that ancestor who was last seised (legally possessed) of that *feudum*. Thus an elder brother can succeed to a nephew, though the nephew's father could next take, by succession to his own brother. The principles are set out very briefly in W. Blackstone, *Commentaries on the Laws of England*, II, 208 ff. (the pagination agrees in the numerous editions of this standard work which was certainly known in Bengal at all relevant times).

Blackstone will be cited constantly below because he was known in Bengal: but for the purposes of the present reference, the reader may compare the language of the MNT with the careful and clear exposition of the English law of descent of land at F. Pollock and F. W. Maitland, *History of English Law*, 2nd. edn. (Cambridge) II, 260—307. Incidentally we note a characteristic of the MNT. The English law totally excluded half-blood from succession to land. We have seen that the MNT classed half-blood and full-blood together. His great fondness for the scheme of seeking the heir through the ancestor, as if the propositus' heir were the ancestor's heir, which is the essence of the English system as at that time, did not commit him to accept all the consequences of this. So elsewhere an English rule appears, but not with all its technicalities, refinements or concomitants; the rules appear rather eclectically and sporadically.

More foreign still is verse 52, according to which the well-behaved son's daughter whose parents are dead and who has no brother may share here father's father's property along with her father's brothers, i.e. females have a right of representation. This is unknown to Hindu law, but follows the English, or at any rate a western, pattern. To our author the son's daughter seems a more worthy heir than even the deceased's own daughter (v. 53): this is most irregular from a traditional Hindu standpoint. On the whole the scheme of inheritance is a peculiar one, being neither what the Dāyabhāga law required nor what English law suggested, but a curious amalgam of the two expressed constantly in terms of ascent and descent, such as would occur only to one who had viewed Hindu customs through western eyes. To him two principles stand out throughout the scheme: that males should have priority over females, that property should descend rather than ascend, and that where descent is not possible the property ascends and descends through senior relations (cf. 57). This has an undeniable and peculiar affinity with the old English law of descent of real property, and seems comical in a Hindu setting.

Passing from the important topics of marriage and inheritance we may continue with rules foreign to the *śāstra*. It may be convenient to proceed in the order of the book. At VIII. 125 we are given a rule about the distribution of prize amongst soldiers. Shares are to be given according to merit. Included in prize may be items conceded under the peace-treaty. This has no counterpart in the *śāstra*. At VIII. 141 we are told that the interest on barley, wheat or paddy is 25 per cent per annum, whereas in the case of metals the interest is 12½ per cent. The last is novel. There is no means of knowing whether any actual usage in Bengal corresponded to it. The *śāstric* provisions on the number of witnesses required are summarised at Kāṇe. The texts require three witnesses. Bṛhhaspati says that there may be nine, seven, five, four or three, or even two if these are learned Brahmins. But Viṣṇu and Bṛihaspati are in conflict with Yājñavalkya, Viṣṇu (elsewhere), Nārada, an Manu (VIII. 77) on the question of a single witness. Vyāsa allows a single witness, and the majority are in favour of a single witness if he is especially or generally qualified. Thus the MNT is against the current in requiring two witnesses. But the English ecclesiastical courts required two witnesses for full proof. A rule rather like the allegation of 'superior orders' appears at XI. 80: "The man who kills another in obedience to an imperative order is not guilty of killing, for it is the master's killing. This is the command of Śiva." This

appears at Avalon's translation, p. 350, but I have very slightly amended his version. There is nothing in the *śāstra* to correspond to this, nor, it would seem, to XI. 91: "After punishing them severely the king should banish (*niryāpayet*, an unexpected word) from his country those mortals who give false evidence or who, as arbitrators, are partial (*pakṣapātinaḥ*)". On the number of witnesses, a strange rule also appears, at v. 92: six, four or three are enough, but so is the evidence of two witnesses of well-known righteousness. The basic difference between this and the *śāstra* is not the figures as such, but the statement in terms of an annual interest. For information see R.S. Sharma, "Usury in early mediaeval India (A.D. 400—1200)," *C.S.S.H.*, vol. 8, no. 1 (1965), 56—77. Derrett, at Z.V.R., vol. 65, pt. 2 (1963), at p. 181, shows that Jagannātha Tarkapanchānana testified to 30 per cent as the usual interest on grain, and states that 25 per cent has been evidenced in mediaeval and modern times. The MNT is a piece of such evidence. The means whereby evidence may be taken from blind and deaf-and-dumb witnesses, at v. 94, is supplementary to the *śāstra*. The punishment of forgers (double that of false witnesses) is also new: v. 96. The statute of 2 Geo. II., c. 25 was believed to be applicable in Calcutta (by the Supreme Court), wrongly. Nandakumār was hanged for forgery within that statute. A summary of the position is given at Derrett, "Nandakumar's Forgery," *English Historical Review*, April, 1960, at pp. 230—1. The death-penalty for forgery was entirely un-Indian, and the MNT certainly does not adopt it. Nandakumār's trial took place in 1775, and reaction against the law set in soon afterwards. The Act itself was doubted applicable in *R.v. Collipersaud* (1786) Morton 357, 1 I.D. (O.S.), 1110. A completely un-śāstric rule about eating appears at XI. 132: there is nothing wrong in eating on the back of an elephant, on a large block of stone, on a very heavy piece of wood, etc. A further foreign passage is that dealing with maintenance at XI. 58—63. Very comprehensive rules are given about guardianship of a child without parents or paternal grandfather. At 62—3 the rules about maintaining relatives are wrongly translated by both Avalon (p. 348) and Datta. The correct translation appears to be, "O Ambikā! The king, considering the wealh of a man, should force him to give clothing and food to his father, mother, father's father, father's mother, likewise a woman (i.e. concubine), to an illegitimate son and to a sonless maternal grandfather and to a maternal grandmother, if they are poor." The list is of great interest, as it differs from the śāstric provisions, but the expression for illegitimate son (*ayo-gya-sūnu*) is highly curious: the notion "illegitimate" can be translated "what is not proper according to law", and this might well be rendered *ayogya*. Needless to say, the concept "illegitimate" as such (in contrast to 'bastard) is unknown to the native Hindu law. The words *kuṇda* and *golaka* refer to speical classes of illegitimate children. The word for 'bastard' is *jāraja*, literally "born of an adulterer".

The list can be brought to a rapid close with a series of striking rules, all unknown to the *śāstra* as they stand. XII. 83—5, 87 deals with the man who disappears, XII. 94 deals acutely with the administration of charities, and XII. 97—101 has a treatment of the thorny problem of earnings, exempt from partition.

Mūlaṃ vā tad-upasvatvaṃ yathā-sankalpam Ambike

svataṃ vātat pratinidhir dharmārthaṃ viniyojayet.

The verse does not sound śāstric. The principle was that the corpus or property deriving from it (*upasvatva* [literally "inferior property"] is a strange word *possibly* meaning here "profit", instead of the correct word *āya),* should be employed (*viniyojayet* seems to translate literally "employ", or perhaps rather "apply") by the man himself (the dedicator) or his deputy (*pratinidhi* means "substitute", "deputy", instead of the technical term for "trustee", which was the [less general] Bengali *shebayat)* according to the intention (*saṅ kalpa* is correct for "intention", but rather in the sense of the law of charities, intention of the founder, than in its true sense of proposition by dedicator prior to religious dedication) for the purposes of *dharma* (righteousness). This sounds like a Anglo-Indian jurist's notion of what the Hindu law of charities should be.

The disqualifications from inheritance at XII. 102—4 go, in part, beyond what the *śāstra* provides. The śāstric material is thoroughly set out at Jhā, II, 84—108. Kāṇe, op. cit., III, 610 ff. The persons normally excluded were impotent men, outcastes, those born blind or deaf, the insane, idiots, the dumb or those deficient in an organ or sense. It is curious that the killer is not *explicitly* excluded by any Hindu law text, though he is inferentially excluded, a point which Anglo-Indian judges have missed. Anglo-Hindu law naturally excluded the killer. He appears expressly at MNT XII, 103. At verse 102 the author would exclude even those who "lift the hand" against any senior. Mother, father, *guru* (which can mean teacher or senior), paternal and maternal grundparents are mentioned. So does XII. 105—6 which deals with title to property which has been found. The king takes a tenth of unowned property and the finder takes nine tenths. According to the *śāstra* the finder is entitled to a quarter and the king to three-quarters, where the true owner does not claim the property. Kāṇe, op. cit., III, 176. In treasure the king normally took five-sixths, the finder one-sixth. J.W. Spellman, "Ownership of treasure trove in ancient Indian polity." The curious word *prāptā,* which would translate the English word 'finder', should be noticed in passing. There is a new rule on cultivation (XII. 113), on the building and use of tanks (115—117). XII. 118—123 contain miscellaneous rules. The pledge of an undivided interest is forbidden. When animals are pledged and the pledgee works them with the owner's consent, the pledgee (*dhārtā,* literally 'supporter' or 'undertaker') must feed the animals. The present writer has a suspicion that *dhārtṛ* is used in the sense of 'person liable'. 'Liable' (verpflichtet), a term so well known in English law, is difficult to explain, let alone translate. The context is purely Hindu, but the word is unexpected. XII. 121 is foreign in that it requires definiteness in all loans, whether in point of duration or rate of interest: a definiteness that must often have been wanting in such contracts between Hindus. Verse 123 is highly courious:

krama-vyatyaya-mūlyena dravyāṇām vikraye sati
nṛpas tad anyathā kartuṃ kṣamo bhavati Pārvati.

"O Pārvati! The king is entitled to set aside (render of no effect) a transaction when there has been a sale of objects, the price being contrary to (or in breach of) the order laid down." This suggests (*pace* Avalon, whose guess is recorded in his footnote to p. 376) that a scale of prices must have been fixed for certain commodities, and *karma* must here mean 'scale'. The notion of setting aside a sale, not the notion of fixed prices, is novel to Hindu law of the pre-British period. The curious phrase *kṣamo bhavati*, 'is able to' is quaint in view of the normal śāstric diction, which commands or authorises the king to do innumerable acts in the potential mood of the main verb. But if *kṣamo bhavati* translates 'has jurisdiction to', it is quite comprehensible. Finally, at XII 126—7 we have some very general particulars about agents (who do not figure prominently in śāstric law), including a Sanskrit word for "principal", *niyantṛ*, which we have never seen before in this sense. It is in fact quite apt for the purpose.

Rules of Possibly English Provenance

So far we have seen instances of Hindu rules differing from the traditional Hindu law in content, style and language. We have come across words which seem like attempts to translate English terms. The might be a question of style or mannerism. But further evidence reveals that the juxtaposition of Hindu and entirely foreign rules was more complex than a mere contamination of the one by the other. The author wanted to add and to change, as we have seen, and we shall now see whether his source is not English law in some shape or form.

But first we must mention specially the peculiar case of pre-emption. Pre-emption is an ancient customary rule whereby certain classes of persons connected with the owner of property have the right to buy it from him if he shows conclusive signs of selling it to someone in an inferior class from this point of view, or to a total stranger. In a careful study of the provisions of the MNT relative to pre-emption, at a time when this writer was unaware of the probable age of the work, it became obvious that the Hindu writer was not influenced by the much older Hindu works which do deal with preemption. It also became obvious that his inspiration was customary law. It was suggested that the law which he was intent on fixing in written form was very close, in some respects, to the Islamic law. This is quite understandable as at the time, which we now surmise to be late eighteenth century, the Islamic law of pre-emption (*shufa*) was the only written law on the subject available. It is therefore far from unlikely that in this case the true source was not English law (which did not have any rules on the subject) but the law of the pre-British sovereigns, the Muslims.

The first example of apparently English-inspired rules comes from the Eighth Book. At VIII. 135, 137—140 we have a set of rules to deal with the sale of goods. Where goods are sold by description the sale is voidable if they fail to answer to the description. A contemparary authority for this is difficult to trace, since the old law has been codified in the Sale of Goods Act, 1893. But this common-sense rule must have existed in the 18th century. The period of one year stated in the MNT looks like the author's invention. There

is a one-year period within which latent defects may appear and upset the transaction. Neither here nor in the previous rule can a counterpart be found in the Hindu law of sale, which is expounded conveniently in Jagannātha's Digest (Colebrooke, *Digest of Hindu Law* vol. I), because the general principles of sale are not set out in the *smṛiti*-texts. The topic "sale without ownership", as its title suggests, does not deal with breaches of any warrantly other than that of title. Periods of rescission were certainly allowed, precisely to cope with latent defects: But the general period is ten days, not one year! Especially foreign and notably English is the rule is VIII. 140:

dharmārtha-kāma-mokṣānāṃ bhājanaṃ mānavaṃ vapuḥ
ataḥ kulesi tat-krayo na siddhen mama sāsanāt.

To paraphrase this, the god Siva forbids the sale of the human body which is the vessel of the four aims of man according to the scriptures. The enlightedned author of the MNT was clearly opposed to slavery, or at least to traffic in slaves, and was determined to offer what means lay in his power to cut the knot which prevented the suppression of such traffic. *Somersett's case*, Loft's Reports 1 (see Blackstone, op. cit., I, 425) was decided by Lord Mansfield in 1772: England did not know the status of slavery and an American's slave was automatically free by being brought to England. The efforts on the part of English official and others in Bengal to persuade the indigenous jurists to eliminate slavery from their own laws are discussed and illustrated in Dr. A. K. Chattopadhyay's doctoral thesis on Slavery in Bengal (London, 1963). That English philanthropists and even others with more mundane interests to pursue were against slavery and hesitated to suppress it out of fear of running counter to the native laws, must have been well known in Bengal in the last decades of the eighteenth century. The rule which appears in the same passage, to the effect that sale is completed when buyer and seller are agreed on the object and the price, is purely English. Our text relating to slavery comes at the end of the section on sale.

At XI. 68 we are given an interesting rule regarding the presumption of legitimacy. No such rule appears in the *śāstra*. A child is not legitimate (*yogya*) if born within the twelfth fortnight after marriage or later than one year followintg the husband's death. Islamic law sets much longer periods. The English rule is that a child is a bastard if born before marriage or so long after the death of the husband that by the usual course of gestation, he could not have been begotten by him. The law is not exact as to the days. The ancient English land law knew a period of 40 weeks for the purpose of allowing a female to give birth to a legitimate heir who would divest the heir presumptive: Blackstone, I, 456. R. Burn, *Justice of the Peace, tit. Bastards*. A careful distinction is made between intentional and unintentonal homicide (XI. 71—2). Punishment is provided for the attempted suicide (XI. 73). There is no guilt in killing in a duel or in self-defence (XI. 74). The death penalty is prescribed for those who commit treason, subverting the government or comforting the king's enemies, creating disaffection amongst the troops, waging war

against the king, and also for armed highwaymen (*pāntha-piḍaka* is an excellent translation of 'highwayman')—XI. 78—9:—

rāṣtra-viplāvino rājyaṃ jihirṣūn nṛpa-vairiṇām
raho hitaiṣiṇo bhṛtyān bhedakān nṛpa-sainyayoh.
yoddhum icchūḥ prajā rājnā sastriṇaḥ pāntha-piḍakān
hatvā narapatis tv etān naiva kilbiṣa-bhāg bhavet.

The language shows an attempt to translate from English, and the law, of course, agrees with English law of the period. The law of defamation, that is to say as a criminal offence, appears at XI. 85—6, but it is specifically added that the defamer should be made to pay damages to the injured party. The expression for 'injured party' is *aniṣta-bhāgi jana*, which is rather clumsy Sanskrit, revealing an attempt at literal translation.

At XI. 97 we are told that an admission of a party (to litigation) is worth more than the evidence of witnesses. This clearly refers to English judicial procedure. The word for 'admission', then known as 'confession' (*angikaraṇam*) is correct Sanskrit, but evidently used in a technical and here purely English sense. Avalon foolishly renders the word 'oath', though Datta's translation is correct. XI. 100—1 deals with oaths, both oaths to be taken by witnesses and oaths taken to secure actions. Our author is very hostile to misuse of liquor. Naturally, since liquor plays a part in tantric ritual and he is keen to make tantrism respectable. Hence, the English law relating to the power of the magistrate to chastise those incapable through drink is called upon at XI. 113, 115, 118, 119. The provision that first offenders should be punished lightly (XI. 24) is consistent with English usage and with śāstric principles. The subject of treason, which we have already encountered, appeared for the first time actually at XI. 27—30. It is important to notice that the English crime of petty treason appears at 29—30, and the duty of the subject to maintain loyalty to the king is stated at 28. Alone of Hindu writers the author of the MNT gives details of incest. The English law being part of the canon law of the Church was well armed on this subject: the Hindu law much less so. At XI. 31 the death penalty for incest appears. Perhaps this was severe by any standard. Then in vv. 32—4, 35 the relations are listed with whom intercourse amounts to incest. But a lesser (and Hindu) penalty is provided for those who have intercourse with women not within the strictest limits of incest. Here an amalgam of Hindu and English ideas is to be found. Nullity of marriage is provided in clear terms (a notion wanting in the smṛti literature) when the marriage is between close relations (XI. 36), and on account of impotence (XI. 66). For the English law on prohibited degrees and impotence reference should be made to Burn, Eccl. L. (cited above). The position in western cannon law is sufficiently well known. At Hindu law in very ancient times a woman might leave an impotent husband and take another husband, but it is doubtful whether the second husband was huband in the *dharma-śāstra* sense, he may have been merely a *de facto* husband. But if the wife were still a *kanyā* (maiden) she could theoretically undergo the religious marriage ceremony again: Kāṇe, II, 609 ff. Sodomy and rape are stated as crimes bearing the death penalty,

at XI. 44 and 45 respectively. There is some doubt as to whence the rule comes which is stated at XI. 53. This is the husband's virtual privilege of putting to death an adulterer caught in the act. Indecent exposure as a crime appears at v. 50, but curiously no punishment, only an expiation is prescribed.

At XII. 12, 15—17 a jurisdiction is given to the king to compel partitions and to decree partitions in disputes between co-partners in family property. This was one of the innovations introduced into Hindu law by the British judicial administration. Previously, of course, sharers had the right to divide and to compel one another to make the property available: but the jurishiction in Equity to compel disclosure of assets and to attach and appoint receivers, to order payment out to creditors and to make such other consequential orders as are clearly referred to in this passage was something relatively recent in Hindu experience; from which we may judge that our author saw the Hindu law adapting itself under the new administration.

Conclusion as to the legal rules

Our author was not ignorant of *śāstra*, and many of his rules have a śāstric flavour. He refers to custom, such as the custom of primogeniture (XII. 10), in a manner that no śāstric writer does. He was evidently writing for those who wanted a practical guide for legal as well as spiritual life, and we have seen that both in the context of marriage and that of inheritance he introduced elements which were previously recognized neither in custom nor in the *śāstra*. His language is delibeately alien to that of the *śāstra*. His verses are so simple and pellucid that the commentator's commentary is no more than a literal and undistinguished paraphrase. He aims to be understood by anyone knowing Sanskrit. His Sanskrit translations of what must have been English terms are in some places awkward: but would his newly part-anglicized litigant public object to this?

What was his motive? Did he hope to effect a revolution in Hindu law? Was he aiming to satisfy English judges and ease their difficulties in administering Hindu law? It is very difficult to be sure. The amount of sheer labour involved in preparing such a large work, and the scale of the enterprise, certify that it must have taken not less than two years to write, and it could not have been undertaken without high hopes of its being treated seriously. The legal portions are part and parcel of the whole, and had they been unsatisfactory the whole would have suffered. It may be safer to assume that his motives were mixed, and we can return to the possibilities when we have ascertained the probable date of the work.

The date can be fixed by reference to certain reasonably definite chronological points. English law became of importance to the population of Bengal as a whole only after 1765, but no one knew for certain that English law would be administered to Bengalis generally until the grant of the Diwani from the Mughal Emperor in that year had been followed by the decision on the part of the East India Company to stand forth as Diwan and perform the judicial functions of that officer in their own persons. By 1772, when Warren

Hasting's Regulation preserved marriage and inheritance and the laws of caste as topics to be determined solely by reference to the *śāstra* it became evident that English law would be called upon slowly and indirectly in the non-listed subjects, though not necessarily, nor conclusively. Knowledge of how this would work must have dawned very slowly, even in the quick minds of Bengalis. To make the Hindu law capable of being understood and applied the Gov.-General caused the *Vivādārṇava-setu* to be complied, the material to be set out in an order and with reference to topics settled by or for himself. While this was progressing—a scheme in which the minimum of interference in the Hindu law was to be made by English lawyers, as the result shows—the English Parliament, dissatisfied with the behaviour of the East India Company's servants in Bengal, set up a new system, and enabled the Supreme Court to be created. The unhappy history of this court need not detain us here. What matters is that within a very few months of its being established in 1774 the general public of Bengal came to believe that English rules would be enforced throughout the Presidency and with reference to any kind of topic. The relatively clear distinctions between the listed and the non-listed topics of the Regulation of 1772, were for a while obscured. The whole question of law and jurisdiction was in the air. No one knew what would happen. Would the rulers apply native rules at all, and if so in which spheres? The Supreme Court and the East India Company's servants were at loggerheads. The appellate jurisdiction of the Commpany's chief court at Calcutta was suspended. The year 1775—6 was the year of peak anxiety. Several different theories were propounded at Calcutta. The supremacy of the Supreme Court in matters of law led to a belief that English rules would be resorted to, or should be resorted to, in any litigation.

The Chief Justice of the Supreme Court, Sir Elijah Impey, was not always of the same mind in this respect. At times he inclined to the view that English law should be relied upon to supplement, and at times amend, as it were by judicial legislation, the native laws. Ultimately the fundamental hypotheses of Warren Hastings triumphed and the East India Company's courts were reestablished by the Company's own government on a footing agreeable to English lawyers. The listed topics were not enlarged. Thus, in the Company's own courts, the Hindu religious sources could still, and indeed must still be resorted to in those areas. And they might still be resorted to for guidance in others. The criminal law was still basically Islamic, as pandits regretted. It did not cease to have this character until Lord Cornwallis's time, nearly twenty years later, and even then it was only modified, not abrogated. But the Supreme Court was administering English law, including English criminal law, and the case of Nandakumār, in 1775 assured everyone that English ideas could be applied to Hindus who had never envisaged such a misfortune. Uncertainty as to the scope of reference to native laws, and certainty that far more English law would be applied to the people than they had wished, prevailed beyond 1780. All this time the Company's judges who wished to apply Hindu law in the listed topics experienced every kind of difficulty in ascertaining what the law was. The litigants put in certificates of the law signed by numerous pandits, and the 'new śāstra as well as the 'old' was relied on. The pandits who were actually employed to expound the law did so in ways which at times excited suspicion. Forgeries of texts were not unknown. But

the theory was generally accepted that the Hindus were entitled to have administered to them the laws of their religion. And at least two schools of law, apart from custom, were known in Bengal.

By 1782 the situation had changed. The jurisdiction of the Supreme Court was curbed. The Company's courts, especially in revenue contexts, were less open to interference. The Hindu law itself would be administered in the Supreme Court, according to a list differing from that of Warren Hastings, in fact a little wider, but much more definite. The Hindu law of contract, for example, was part of the law of that court. There was no question that the East India Company (who represented the Hindu 'king') would administer the English riminal law. But under 'justice, equity and good conscience' there was every possibility that their country judges would consult Hindu books of a suitable character for aid in non-listed matters.

It is difficult to be precise. The writing of the MNT took time. It could not have commenced until English legal ideas and English legal terms came to the knowledge of the author. How soon could that have been? By 1773 this was already possible. Did an English attorney consult with the pandit? Or did some attorney's clerk supply what was needed, who had familiarised himself with whatever library was then available? The present writer thinks this much more likely. The years of maximum anxiety and maximum need for information would be the years in which curiosity about English law would be at its height. On the whole 1775 is the best year in which to conjecture that a start was made on the MNT. If it was finished by 1777 the whole project would be over long before the Regulating Act of 1781 set limits to the scope of English law in the Supreme Court, and allowed the Company's courts to proceed in their own way, and to develop their own balance between the native and the imported laws. But it is difficult to be so exact. The date of the *Mahānirvāṇa-tantra* may thus be put conjecturally at 1773—1780.

Our provisional conclusion is that the author wanted to purify the tantric religion, and thereby to make it more popular, and to enable tantric Hinduism, which ws more real to many Hindus than Vedic Hinduism, to resist the inevitable confrontation with Christianity. Here he may have been gifted with foresight, because the impact of missionary endeavour had still to be felt: the presence of Christian clergy did not amount to a mission prior to 1793. Missionary endeavour after the turn of the century was chiefly protestant and narrowly protestant at that. The author of the MNT had information deriving ultimately if not directly from a Roman Catholic source (another reason why Rāmmohun Roy, who was affected towards Socinianism, could not have been the author). The trantric relgion, thus advanced, could be called upon as a law for a religious community which would embrace more than the caste Hindus. Under the Juridical schemes of 1772 and 1781 the members (whom he calls *kaulas*) could claim that their laws of marriage, inheritance, etc., were regulated by a sacred book composed by the god Siva. The English administrators would welcome a book which could easily be read and the tone and much of the contents of which would be familiar to them. And the new community would have the advantage of an up-to-date atmosphere so far at least as its legal awareness was concerned.

Mahānirvāṇa-tantra and Rāmmohun Roy

The Rājah Rāmmohun Roy possessed a copy of the MNT, which he may or may not have copied for himself. He used the book and had a high opinion of it. His followers likewise used it. What was his relation to it? The chronology of his life must first be recapitulated. He was born 22 May 1772. He was educated principally in an Islamic atmosphere, and was later self-educated in Hinduism. He was married twice in the orthodox style and since his third wife, who died in 1858, was treated in every respect as a regular Hindu widow from the Rājah's death in 1883, we may presume that she also was married in the orthodox style, i.e. she was not a Śaiva wife. His two sons, Rādhā Prasād Roy and Rāma Prasād Roy were both unquestinably legitimate sons, and neither can have been a Śaiva son. The statement of Avalon (who ought to have known better) that Rāmmohun Roy had a Śaiva wife and child turns out to be without foundation. The boy taken with him to England (Rāja Rām) was a foster child, as was well known in Calcutta, and not a Śaiva son of the Rājah's. Rāmmohun's complicated and unusual education completed, he entered the East India Company's service, from which he retired a wealthy man. Indeed the sources of his wealth are known to have been various and we cannot accuse him of any particular degree of corruption if office, notwithstanding the habits of the time. The most significant period from our point of view was between 1809 and 1814, when he was serving at Rangpur. There he studied "modern Tantric works" with the aid of Hariharānanda, "a Bengali Tantric mendicant whose acquaintance he made there...". Within two years of leaving Rangpur he had published a work on the *Vedānta-sūtra* and founded the Ātmiya Sabhā, the first of his societies with a religious object, upon an analogy with a Christian church. The year 1816 sees him making his first reference to the MNT. By this time he cites tantras along with Upanishads and other traditional Hindu scriptures as if there were no great difference between them. In his first work *tantras* are defended as s'āstric works. The MNT is quoted or paraphrased by him in 1817, 1820, 1821, 1822, 1827, 1828, 1829. He shows himself well aware of false *tantras* and the possibility of forgery. He says himself, "...those Poorans and Tuntrus only which have been commented upon or quoted by respectable authors are to be regarded." Rāmmohun was greatly interested in the *Kulārṇava-tantra*, which he frequently quotes and is supposed to have edited. The date of this is doubtful. But how he can have reconciled his general caution with the use of the MNT which had only the commentary of his own teacher, and that too a poor apology for a commentary, it is difficult to see.

Rāmmohun certainly taught that the Śaiva marriage, which he could support only from the MNT (which he cites), was as good as a Vaidic marriage. His radical reformist propositions in the realm of marriage were based on the MNT. In his attack on *sati* he was supported also by the MNT, which was against the practice. It is curious that the Raja does not rely specifically on this. The explanation seems to be that as in the same context he abuses those who rely on spurious tantras, and warns readers against texts which have no solid traditional foundation, he found it more discreet not to drag in a

work which he might securely rely upon in other contexts. But this caution did not operate in the *Dialogue*, where as we have seen he speaks of false scriptures *and* cites the MNT. In a short form of worship published in Bengali by Rāmmohun the hymn beginning *Namaste Sate* (III. 59) was set out, but it seems the form was not actually used in the services of the Brāhma Samāj founded by the Rāja. Texts from the MNT do however appear in the *Brāhma Dharma Grantha* compiled by Debendra Nāth Tagore, Rāmmohun's successor in the Brāhma Samāj.

There cannot be the slightest doubt but that Rāmmohun regarded the MNT as a genuine, i.e. old work. He knew a great deal of *dharma-śāstra*, as is shown in his legal works, so that must have detected the curious Anglo-Indian tone of the MNT's legal portions: but this did not deter him from relying on the work even for the extremely controversial Śaiva marriage project. Were others imposed upon as well as Rāmmohun? In fact, it was cited to no less a critic than W. H. Macnaghten in about 1820 by a pandit, to whom he applied for information in a pre-emption matter (a non-listed topic). So that in the interval between Rāmmohun's contact with Hariharānanda (1809—1814) and this occasion the book was believed by others than Rāmmohun himself to be a genuine Hindu scriptural work. Lately, of course, the authority of the MNT for this purpose has been denied, but the suspicions of the Indian Supreme Court do not take us any further forward, as their information is no better than ours.

Rāmmohun Roy was the most gifted Indian of his time, perhaps the most talented and accomplished of all time. With the eception of Swāmi Vivekānanda, whose educational opportunities may have been slightly better, no one has equalled him. His main interest was religion, and he was far ahead of his time in projecting a monotheistic version of Hinduism, based on original sources, whilst at the same time admitting the virtue of aspects of Islam and Christianity. For fear of losing his property, and out of a lack of sympathy with the narrow views of missionaries in Calcutta, he never actually became a Christian, though while in Britain he allowed himself to be supposed a Unitarian. He is the supreme example of the shrewd, yet idealistic, practical yet visionary, supple and diplomatic yet personally inflexible, adaptable and curious yet resolutely patriotic and faithful son of India: characteristics often repeated, yet never so dramatically and effectively as in the first great example. He was ever in the midst of controversy, especially from his own countrymen. And he was never at a loss for arguments, with which he sustained his character and reputation all through a life spent in walking an intellectual tight-rope. Such a man was imposed upon by the *Mahānirvāṇa-tantra*, which may well have been written by Hariharānanda's *guru* (who can conceivably have died by 1809), or some other brilliant mind which can easily have approached the great Rāmmohun through Hariharānanda.

Why was he imposed on by it? Because of its brilliance, obviously, because it said what he wanted to read, and also, we must add, because of the credulity of the hard-headed practical man where spiritual matters are concerned. The man who learnt enough Greek and Hebrew to quote extensively from the Holy Scriptures, and anticipated many

a critical line of attack upon apostolic Christianity (whether accurately or not is another matter) was himself the dupe of a brilliant almost contemporary fabricator on his own door-step. How can this happen, and what is the nature and power of this credulity?

Credulity and the Mahānirvāṇa-tantra

The MNT told Rāmmohun Roy what he wanted to believe and wanted to pass on to his countrymen. No one challenged him when he relied upon it exclusively, though this has happened since. That he was not challenged may to some extent be explained by the lack of an agreed check-list of *tantras*. There was no means of determining which of the vast number of them were genuine, no agreed criteria. If an anonymous tantric work by an unknown author were found who could determine its pedigree? The British judicial world was all too aware of the dangers of opening the flood-gates, and swamping the public with any and every text calling itself a religious treatise. But the native public had no means to secure itself against fabrications, and the *śāstris*, the orthodox professors, as distinguished from tantric teachers, confined themselves to the treatises in *dharma-śāstra*, themselves susceptible to additions as time went on.

Rāmmohun was a man of means, and subsequently a man of considerable wealth. He was a patron of letters, patron of scholarship, patron of religion; the difference between him and many counterparts throughout India was simply that he did much more himself and published much more in his own name than most such patrons did. He was in government service and it required little skill to guess that he would be influential. He actually advised the British government on how to administer the Presidency, judicially and otherwise. So the instinct of the fabricator or (if he were already dead) his medium (probably Hariharānanda) was sound, though the plan did not mature as soon as they had expected. The pattern to which Rāmmohun belonged already existed, and has been repeated frequently.

The individual is occupied with purely business affairs, in the course of which many decisions of questionable morality are taken. In his leisure he cultivates spiritual interests, partly to off-set this. He wishes to retire and devote himself to spiritual exercises and activities, partly as an atonement for his previous occupations. He is a natural prey for pandits and *sanyāsis*, spiritual guides whom the victim imagines he has himself chosen and patronised, though they in fact manipulate him. Naturally there is an exchange. They have his money, and the prestige of advising the great; and he has the satisfaction of being ultimately true to his native culture. The process of duping such a person is not confined to Indians! Numerous western readers and travellers have fallen into similar situations. It is sufficient if we take one example from the western and one from the Indian world. Our westerner shall be no other than Arthur Avalon himself.

Sir John George Woodroffe was the eldest son of J.T. Woodroffe, formerly Advocate-General of Bengal and sometime Legal Member of the Government of India. Woodroffe was therefore acquainted with India in his childhood and especially with Bengal. He was

born in 1865 and was educated in England, taking a second class in the Honour Scool of Jurisprudence and the B. C. L. at Oxford. He was called to the Bar in 1889, and in 1890 was enrolled as an advocate of the Calcutta High Court. He was made a Fellow of Calcutta University and appointed Tagore Professor of Law there. He collaborated with Mr. Ameer Ali, later a member of the Privy Council in London, in a widely used text-book, *Law of Evidence*, besides a work on Receivers. In 1904 he became a Judge of the High Court at Calcutta. He served on that Bench until 1922, and in 1915 he officiated as Chief Justice. He retired to Britain to become Reader in Indian Law in the University of Oxford, then a responsible as well as a distinguished post, from 1923 to 1930. He died in 1936.

His hobby was Hindu philosophy with especial reference to *tantras*. Under the name of Arthur Avalon he published numerous texts and translations, a complete list of which will be found in any of the recently published reprints. No one who approaches his work can come away without two strong impressions: (1) that he was driven by an emotionally-based obsession to contribute to the scope and prestige of Indian studies; and (2) that this obsession operated upon him in a manner inconsistent with his judicial and indeed practical avocations. This was a clear case of schizophrenia. Slips in his law can easily be accounted for on this basis. The absurdities and mystifications of tantrism should have repelled a man of disciplined mind. But Avalon-Woodroffe did more to publicise them than anyone. It is noticeable that as a judge he made few or no contributions to Hindu law. True he had as a colleague the uterly formidable Sir Āshutosh Mookerjee. But if his interest in Sanskrit were compatible with his judicial work surely he would have specialised in Hindu law cases, at that time requiring attention to Sanskrit texts as well as case-law. No use of the MNT is made by Woodroffe from the Bench, whereas his contemporaries, Chief Justice Jenkins and Sir Āshutosh do actually cite it once. The present writer's view is that an infantile connection with Bengal gave birth, despite an English University education, to an emotional attachment to the characteristically Bengali religious enthusiasm, tantrism. And in the course of the help he must have received from tantric guides and scholars he must have been practised upon by native enthusiasts. And there was a publisher, in Madras, who knew the market for such trash. Not that 'Avalon' knew any more of the *pañca-makāra* than Woodroffe did, or than Rāmmohun could have done. The emotional attachment to these treatises, however, is evidenced by his desperate attempts to show that the MNT was an ancient, or at any rate mediaeval work. As a judge he must have realised that this could not be so. As a judge he could not have uttered or printed such puerile impostures. But as 'Arthur Avalon' he could wish to believe that what he was handling was ancient and genuine, and he could put forward whatever he chose without shame or fear of being refuted. The comments on Avalon's work in M. Winternitz's Die Tantras und die Religion der Saktas", *Ostas*. Z. 1916, no. 3 (see Woodroffe, Shakti and Shākta, 3rd edn., 1929, 4th edn., 1951, ch5) is appreciative, but the present writer prefers the approach of J. N. Farquhar, Modern Religious *Movements in India* (N.Y., 1919), 305. Kāṇe was not taken in by Avalon. Avalon's pretence that he had seen a copy of the complete MNT, containing the second part, about 500 years old in the possession of a Nepalese pandit (see his tanslation introd., p. viii, also at *Shakti* and *Shākta*, p. 124) is an

insult to the reader's intelligence. There was nothing to prevent his making a copy of all the text for his own use: that he did not do so suggests that the whole story is a fabrication of an unbalanced mind. A Bhārati (n. 1 above) is polite to Avalon, whose 'work can hardly stand scholarly scrutiny", at p. 9.

Our second example of a practical man displaying credulity in the context of a bogus spiritual work with legal content is an Indian who performed the feat of adjustment to western standards more faithfully than Rāmmohun Roy himself. In Madras Presidency, during the second half of the nineteenth century, progress such as could be claimed for Bengal itself was made towards the unattainable goal of assimilating western techniques and standards whilst not ceasing to be rooted in the ancient tradition. Against some opposition and much indifference three Indian lawyers of various backgrounds and not highly privileged adolescence, without the aid of foreign training or patronage, reached to High Court Bench. This test of endurance, character, personality and learning is at all times severe, but was particularly so when the demands of the law were greater than they are now (the sources being much more open to debate), and when European lawyers and judges had no partiality for recruiting their numbers with the aid of local talent. One of the great successes in this exceptionally hard trial of strength was S. Subramaina Iyer. He came from Madura to Madras in 1885, and became a formidable rival to the great V. bhāshyam Iyengār. He was the first Indian to be made a Government Pleader. He was renowned for integrity and charm of manner: a scrupulous man. Here we may need to emphasise his ability to pierce complicated conundrums, such as constantly arise in Indian litigation, and his intuitive sense of the correct answer to problems raised by evidence. His interest in the scholarly aspects of law is proved by his house being used for the 'Saturday Club' at Mylapore (Madras) where cases were critically discussed. These meetings were held from 1889 until 1890 or 1891, when Subramania Iyer was made an acting Judge of the High Court. He was then the seniormost leader of the High Court Vakil Bar. He succeeded the first Indian to shine on the Madras High Court Bench, Sir Muthuswāmy Iyer, because he was three years senior to Bhāshyam Iyengār, who eventually joined him. He remained on the Bench until 1907, when he resigned due to fears about a decline in his health, particularly some nervous disorder, not apparently severe in other people's estimation. He held at other times very responsible positions. He was a member of the Malabar Land Tenure Committee (1885), a difficult task. He was also trustee of at least one important public temple. The post of Acting Chief Justice was occupied by him in 1899, 1903 and 1906. He was Vice-Chancellor of Madras University in 1904. Lord Ampthill said of him, "It seemed to me that in his life and conduct he effected an ideal compromise between adherence to the Indian ways and the requirements of European methods. Neither too conservative nor too progressive he remains the perfect model of an Indian gentleman..." A seated statue of him is to be seen in a prominent place near Madras University, and a fine portrait is to be seen in the High Court and at Adyār, where also a marble replica of the statue is to be seen, and where also an avenue (of no great importance, however) is named after him.

During his tenure as Judge it was known that his real interests lay in spiritual matters.

Immediately after his retirement, which was have seen was premature, he joined the Theosophical Society as Vice-President. He was by that time an LL.D., and had been gazetted K.C.I.E. Sir S. Subramania Iyer was one of the first figures in Madras and it was an honour for the Theosophical Society to have him so highly placed between 1907 and 1911. Dr. Annie besant thought so highly of him that she continued to publish matter of his writing even when it ceased fully to agree with her own notions. His contributions to *The Theosophist* occured already in 1915. He disapproved of the Government of India's behaviour and communicated with America in a manner disapproved of in turn by that Government. He resigned his knighthood in protest. Integrity marked his public life throughout. His interest in the *Śuddha Dharma Maṇḍala*, or "Pure Religion Society', which he founded, brought some rift between him and the Theosophical Society, for, as we shall see, he aimed to provide a rival world leader to the theosophists' J. Krishnamurthy. But it is rumoured that when he died in December 1924 he was reconciled to the senior organization of which he had once been a prominent member.

Between 1915 and 1918 he published a series of nine articles which were subsequently republished under the title *An Esoteric Organization in India* (Madras, ? 1919). The commencement of this work goes curiously as follows, "Never since the day when the Head-quarters of the Theosophical Society were transferred from America to Bombay, in 1879, have the founders of that Society escaped the charge of fraud with reference to their assertion of the existence of Mahātmas, of Initiates, and of the possession by them of occult powers and the like." But at the time Sir Subramania was learning from Mrs. Besant spurious archaeology, fraudulent presentation of scripture, and practical organization. In 1917 he published the *Sanātana Dharma Dipikā*, which is of interest to us, since it takes us to a point where credulity, being a willing dupe, interest us in our search for the origins, purpose and early history of the MNT.

The prime movers of the *Suddha Dharma Maṇḍala* (which survived until as late as 1952) were principally Sir Subramania, now well over 70 years of age, and a Pandit K. T. Sreenivāsāchrîar of Madras. It is evident that the former lent his name and did most of the English writing (which often has a legal flavour) for the *Maṇḍala's* series of publications. In more than one publication a photograph of Sir Subramania appears, dressed as a *sanyāsi*, with his name and titles added, in order to give prestige to this bogus or ganization. The *Sanātana Dharma Dipikā* purports to be a *purāṇa*. It is full of mock puranic material. In Part I, chapter 1, sec. 181 we are told that the deity said "I will re-establish the organization named Śuddha dharma-maṇḍala: it is as old as time, excellent and makes its appearance with each *kapla* (era)." At sec 289 we are told that all people will have one faith, one caste, in the Kali-yuga (the present age); at secc. 292—4 that all *dharmas* will be unified. At ch. 2, secc. 76—8 we are told that women will choose their own husbands. Social reform is evidently within the scope of the spurious literature which is now put forth.

In 1918 the *Yoga Dipikā of Bhagavān Nārāyaṇa* was published in the same series, purporting to be a work of the deity, with a commentary by Haṃsa Yogi. In 1922 the *Bhagavad Gītā*

was published also with the commentary of Haṃsa Yogi, but we are told at p. 7 that Haṃsa Yogi is not anyone's name, but the title of an office. Evidently 'Haṃsa Yogi' was the Madras pandit himself. By this time the public is invited to supply money to subsidize the publication of commentaries on the entire Vedas in the sense of the S. D. *Maṇḍala*, and so the enterprise which had started as an intellectual aberration takes on the form of a criminal conspiracy. The works published were bogus, but presented as if they were genuine. The author is also non-existent. Relgious and social regeneration is the aim, and no doubt the conspirators were pioneers in some respects, hiding however under the garb of restorers of a lost literature. In 1923 appeared the *Avatāra of Bhagavān Mitra Deva* (Madras, 1923). The sanity of Sir Subramania is here placed in grave doubt. The 'Bhagavān Mitra Deva' was supposed to be aged six, and to have had a miraculous birth and to have delivered many sermons. He was the world leader to be at the moment in close retirement in the Himālayas. That this folly remained alive well into the 1950's shows that the organizers were not without some success, but whether any money was made for the pandit is not clear. Sir S. Subramania Iyer died in 1924 before the elaborate affair (which strikes the reader, misleadingly, as a hoax) could progress further, and nothing more of the kind was published after him.

Why was it necessary to suppose that ancient works were brought to light, while at the same time circumstances made it evident that the compositions were recent, indeed contemporary? What mental process allows this self-deception to occur? Firstly as the *Sanātana Dharma Dipikā* shows, and evidence of the conditions of thought in the 1770's confirms, Hindu scholarship is wedded to the notion that all authoritative scripture is part legislation and part prophecy and is located, actually or ideally, in the first years of the Kali-yuga, except for works of even greater prestige which must be located earlier than all *yugas*. The conception that living persons can lay down law, even in committees of public gatherings, is foreign to Hindu thought. If a thing is right, it must be enshrined in Hindu scriptures. The notion that Hindu conceptions of right can vary from generation to generation within the *Kali-yuga* is not accepted. The converse is obviously correct also. No one who proposes to persuade others can hope for success unless he shows that what he teaches is not his own but the common heritage of the race. In an amusing but characteristic passage the *Manu-smṛti* puts the point admirably (XII. 95—6): traditional texts other than the Vedas are not authoritative; "those others (i.e. other *smṛtis*) that spring up and fade away are all without fruit and false, *because they are of recent date*." Rāmmohun Roy's own scepticism of recent *tantras* is of the same origin. They may or may not have useful matter in them. But as for the MNT, the great truths about monotheism, about caste, about *sati*, about marriage, etc., which suited the age so well, cannot almost by definition, have presented themselves in a recent work. And as there was no means whereby the author could be traced, granted that Hariharānanda (if he was not himself in the dark) had his pupil within his grasp, the famous Hindu scholar and public man was deceived.

The deception practised on Arthur Avalon was largely of his own seeking. The deception practised on Sir S. Subramania Iyer was partly of his own seeking and partly of his own making. In ali three cases the public man and the pandit cooperate to

perpetrate a fraud. In Rāmmohan Roy's case the fraud did no harm, and it is a curiosity of Indian legal history. In Avalon's case the fraud was more serious in that people bought, for genuine, works which are (and perhaps always were) intellectually worthless. Avalon was himself duped in order that others might be duped. His obituary in *The Times* (and obituaries are kind) shows a man who lived in a world of his own. His writings show his disappointment at the lack of sympathy which his effusions evoked in his intellectual contemporaries. Sir Subramania Iyer's yearnings for spirituality and for the spirtual regeneration of his country rendered themselves real through the otherwise unemployed skills of a compatriot pandit, who evidently knew his man.

As for the *Mahānirvāṇa-tantra*, its author is not likely to be traced. We know the names of many of the court pandits of the time, but it is most doubtful whether it is the work of any of them. Could any of them have written in this barbaric style? His notions never materialised as he wised. The *kaulas* never became a sect known to law. Their scriptures were never taken seriously. The judges began to insist upon the production of authentic ancient works to certify any legal proposition. For fear of fraud they (wisely) stretched behind the present and forced the Bengalis of the nineteenth century to be governed by the writings of the eleventh, the fifteenth and the seventeenth. In order to make sure that authentic s'āstric learning would be available in modern garb, Sir William Jones planned and H.T. Colebrooke saw to completion (1795) the great Digest written by Jagannātha Tarkapanchānana. This was made during Rāmmohun Roy's lifetime and completely ignored the MNT. Jagannātha in fact responded to many English legal ideas in his own way: but that is another story.

MEDHATITHI'S CONCEPT OF LAW

This essay, an attempt to encourage the comparative study of Islamic and Hindu legal ideas, is dedicated to Otto Spies, in recognition of his services to India, to Islamic studies, and to comparative law. First, to define the scope and intent of this essay. Medhātithi was pre Islamic in that at the time he wrote (between 800 and 900 A.D.) Islamic legal notions cannot have been widely known to any scholars in India, with the possible exception of the sea-ports of Sindh, Kathiawar, Kutch, Gujarat, and perhaps Malabar. We have no knowledge of any such contact intellectual or personal, and although Al-Biruni was, not long afterwards, to obtain a very thorough knowledge of Hindus and Hinduism, we have no reason to suppose that Hindu scholars made any sympathetic investigation of Islam even at that period. Medhātithi wrote before Muslim adventurers obtained any foothold in Northern India (where he seems to have lived), and his jurisprudence is Hindu pure and simple (in so far as anything Hindu could be called simple).

Next, what is meant by 'concept of Law'? All readers of this eassy will not be agreed to what is meant by 'law'. It is a phenomenon about which agreement is indefinitely postponed. For this very reason an investigation of the concepts of various great jurists is worthwhile. The danger here is that, since the Skt. word for law, *naya*, may not occur

in Medhātithi at all, and since the words which certainly occur do not correspond to any commonly accepted word for 'law' in modern languages, the search may be misdirected or futile. It is necessary, therefore, to frame a definition of law for our present purposes, and then to search in our source for information relative to it. Such an investigation has not, so far as this writer knows, been done. The most usual attempt is to fasten upon the concept *dharma* (righteousness), a virtually untranslatable term characteristic of Hinduism as *fiqh* is of Islam, and to describe it and its sources and mani-festations. Most investigations are made into the *dharma-śāstra*, or science of righteousness, taking illustrations from every period and from authors dwelling in any part or parts of the sub-contient. The great hindrance to an objective, as opposed to a *śāstric*, investigation was that very little was known of the actual practices of Indians contemporary with the jurists. A little progress has been made in this respect, and Medhātithi has himself been very helpful: perhaps more so than any other jurist of ancient times.

For the purposes of this investigation we may define 'law' as follows:

Law is that body of rules (namely positive and negative injunctions, commands and prohibitions) which can be enforced by judicial action. A rule which will not be observed, directly or indirectly, in a court or before a tribunal is not law. What ought (in some people's opinion) to be law, is not law. Pious hopes or fears are not law. Ethical injunctions are not law. That which is left to choice is not law.

Did law exist in ninth-century India? Certainly. Did the jurists write about it? Certainly. How and why they wrote about it must be understood unless we are to fail to appreciate what they were doing when they went into detail about any legal problem. We shall try to answer that question in reference to Medhātithi in this essay.

Why Medhātithi? He was probably the greatest jurist of his science: a substantial distinction. Of the hundreds of jurists whose works are available to us none has laboured in quite the same manner as Medhātiti, and many of his qualities are unparalleled. This can be said with confidence although the text we possess is not his original in all respects. His chief claims to attention are these: first, he is very old: there are few writers older, and they are all short and laconic. Next he devotes his work (the *Manu-bhāṣya*, his earlier *Smṛti-viveka* having been lost) to a minute exposition of the *Manu-Smṛti*, the most famous of Indian law-books, with the intention of making his commentary a textbook in the *śāstra* and making it possible for people of his own day to use Manu with confidence as a foundation for śāstric teaching. Finally, in the course of his exposition he continually brings in views opposed to his own, and disposes of them by reasoning, rather than by the citation of conflicting texts from other *smṛti-s*, which is, all too often, the method adopted by his successors in the science. His reasonings are often subtle, but they are as often practical and have an eye to actual usage. It is from Medhātithi we obtain glimpses of what people actually said and did: and more than once a sense of humour is to be detected, which is usually buried (if at all present) in lesser writers.

Another reason why Medhātithi repays close study is that in his day the development of *purāṇic* contamination of the *dharmas'āstra* was barely beyond its commencement.

Purāṇa's, which purported to be encyclopaedic accounts of history and learned tradition, were usurping the task of the *smṛti-s* in stating what was righeousness and what was duty. The contamination of the textual sources of *dharma* was going on apace. The belief that the ancient sources were to be referred to as authorities and that new sources could not be manufactured was now so deeply rooted (as Hinduism advanced and embraced more and more sub-Hindu communities), that forgery and spurious 'traditions' found an open door. The effort to take over from the decaying remnants of Buddhism and the distinctive ways of the Jains coincided with an internal explosion in the Hindu *śāstra-s*, of which the proliferation of spurious *smṛti-s* and *purāṇa-s* was a symptom. Medhātithi stands at the point where the desire to uphold the 'genuine' *śāstra* against its intellectual rivals is paramount, but the need to rely upon all and every more or less antique text had not penetrated into jurists' technique. A certain intolerance, which was one of the main-springs behind the *purāṇic* movement, is therefore visible in the jurist's writings themselves, an intolerance which begins to disappear with the more flexible and supple ratiocinations of mediaeval writers.

Medhātithi has a great attraction for us in that his commentary on Manu has been translated. The translation, made by *Mahāmahopādhyāya* Dr. Gangānātha Jhā, was more or less commissioned by Sir Ashutosh Mookerjee, the celebrated judge and patron of learning. The translation lacks accuracy in many places. Dr. Jhā was not a *dharmaśāstri*, but a *mimāṃsaka*, and though this skill was extremely useful in unravelling many of Medhātithi's reasonings, it was not appropriate for all the demands which the text made upon its translator. But, for all that, the newcomer to the *śāstra* will find Medhātithi, in the guise of Jhā's English translation, readable and, on the whole, intelligible. In what follows references are made to the volumes and pages of Jhā's translation and to the books and verses of Manu with the *Manu-bhāṣya* of Medhātithi as published by Jhā himself some years afterwards.

What we know of the practice of law in Medhātithi's time is either to be found out from passing references in Medhātithi himself or from inscriptions or from references in literary works. Material from later centuries will not necessarily be irrelevant. Some well-known usages of Hindus today correspond exactly with what Medhātithi himself says.

Law operated in three contexts. (*i*) Between the subject and the king, the king's prerogatives and powers had *de facto* the force of law, and this was recognised in the *dharmaśāstra*, though the latter sought to restrain the king from acts of tyranny. Between the subjects themselves there were two main fields in which law operated. The first is more familiar to us. One subject wronged another. The latter could commence proceedings in front of the appropriate judicial authority, and a decision would be arrived at. It does not follow that the decision would agree with another given in a similar case in the same place previously, and it does not follow that the *śāstra* would invariably be consulted, or if it was consulted that it would be consulted to any particular depth. (*ii*) The second field was that of unilateral breach of a sanction. Again there could be two types of sanction: the sanction might be of a 'civil' character in that the village or district had

enacted what amounts to a by-law or regulation, restraining inhabitants from certain acts or requiring inhabitants to cooperate in an enterprise, either subject to a penalty, or with the penalty for breach unexpressed—or (*iii*) the sanction might refer to some purely ritual or superstitious act, what should be done, or what should not be done, particularly in a social context. For example, if a villager cohabited with a widow, and if it was against local or caste custom to cohabit with a widow, the appropriate local or caste tribunal might take cognizance of this and sentence him to a penance, or, if he failed to conform, to excommunication.

The basic sanctions depended upon custom, and therefore upon agreement. The immobile force of social convention was the ultimate real authority, and even the king's edicts had to be understood within this framework. There were authorised or conventional scopes within which kings could issue edicts, that is to say, with expectation of their being obeyed. But since custom was always being questioned by those who claimed equality in social terms, and since breaches of custom were the subject of debates, some urging that a breach should be punished with rigour, and some urging that it might be justified—a fundamental, scientific basis for all rules of every kind, whether legal or moral, was in demand, and this demand it was the *dharmaśāstra's* task to satisfy: A commentator upon any prime *śāstric* work would therefore be dealing with rules which were by no means legal, as well as rules which were legal in the sense we have defined. A rule, the breach of which could lead to out-casting, with its consequence of submission or in default exile, or rebellion, was indubitably a legal rule, though the court which would administer it would not be presided over by a judge, but by some elders, local or caste notables, people of natural leadership, whose common sentence would be obeyed.

In prescribing law, therefore, Medhātithi is joining that task with much wider responsibility. It was the theory of his author, Manu, that all duties, of whatever character, ethical, moral, and legal, had an existence independent of the individuals concerned (subject to the theory of the ages of the universe), and that all duties could be traced back to creation. The actual fact that duties are learnt from elders was taken to its logical conclusion, that duties had a single common origin in an effort of instruction immeasurably far back in time. In explaining this theory in terms intelligible to his contemporaries Medhātithi proceeds to show that the content of *dharma* is as varied as we have seen, and recognizes the distinctions between the classes of injunction. To him the transcendental and the practical are equally real. Those who do not accept the transcendental must accept the practical, or they will suffer in this world. Though it is the task of the *dharmaśāstra* to teach both, since the problems of avoiding re-birth were seen to be as real as those of avoiding imprisonment, the teacher is aware of the greater urgency of the latter to most people, and, what is often overlooked, the reality of a caste's or a village's superstitions when these express themselves in terms of punishment or excommunication.

We are now in a position to approach Medhātithi's conception of law in India as he saw it.

Morality, Law and Dhanādhikāra-bhāva

Dhana could be "pure", "impure" and "varigated"; and there were means of "purifying" wealth. The basis of these concepts was religious and/or moral, and they must have been important even for secular purposes in the pre-legal periods; in historical times their significance existed until the Mimāṃsā discussions to which we come immediately.

Hindu law observed the difference betweent what was morally prohibited and what was legally void. English observers in the 18th century were quick to identify a rule comparable with *quod fieri non debuit factum valet*. The rule was slow to emerge, however, because of the long regime of the caste-tribunal, which, depending upon emergent circumstances, might give to moral lapses an importance indistinguishable from crimes, while a breach of a moral command could lead to the nullity of the act. Courts of such a description would be slow to draw such distinctions as the jurists afterwards insisted upon. From the 11th century at the latest commentators and others admitted that any rule was capable of classification into one which affected the individual (by way of sin) and one which, whatever its relevance to the individual, affected the act itself, so as to produce a nullity. In one view only rules which were part of the *vyavahāra* section of the *dharmaśāstra* could lead to nullity of the act, if they were broken: other rules, which were intended to operate in conscience and in the ambit of social jurisprudence might be broken without affecting the validity of the transaction.

The British were greatly impressed by this school of thought, and it has unduly influenced Indian case-law. Even for our present purposes the authoritativeness of the Veda or *smṛti* is of little significance if breach of the rules in question would not in practice lead to a nullity. However, the background of the system and the concept of Property, and its uses, cannot be understood without some knowledge of the problem.

Regulation of acquisition: Dhanārjana-niyama

Brahmans, more than any other caste, needed to consider the rules of Gautama and Manu seriously (IV A iii). Their ritual austerity and "purity" was essential as a prerequisite for their selection as donees of religious gifts, and appointment to influential posts in the administration. The narrow path was insisted upon in *śāstric* texts for their, and their patrons', guidance.

Manu says:

He may subsist by *ṛta*, and *amṛta*, or by *mṛta* and by *pramṛta*; or even by what is called *satyānṛta*, but never by *śvavṛtti*. By *ṛta* must be understood the gleaning of corn; by *amṛta*, what is given unasked; by *mṛta*, food obtained by begging; and agriculture is declared to be *pramṛta*. But trade and the like are *satyānṛta*: even by that one may subsist.

Accepting anything from a *caṇḍāla* ("untouchable"), and from accepting anything ritually from a person who was *asat*, literally "non-good" or "who is disabled by unexpiated sins". All classes were prohibited from acquiring anything from a thief. Hindrances such as these might affect considerable sums of money, or tracts of land. Certain objects were

prohibited from certain transactions. The horse, for example, was the object of restrictive rules. Trade in sesame and a wide range of commodities was forbidden to some classes in some situations. While savouries ought to be *exchanged* for savouries salt was an exception (no one knows why) and sesame must always be exchanged for an equal volume of corn irrespective of price!

The special topic of usury provides a valuable illustration of juridical technique, which may be summarised here. Anciently lending money, etc., at interest had been a forbidden profession to all but the special class which apparently developed out of the need for it. Later odium attached only to those who lent outside the provisions of the *śāstra* on the subject. Usury was controlled by (i) fixing maxima available by way of interest on coin, and, respectively, on various classes of loans in specie; and (ii) permitted rates of interest classified according to the caste and occupation of the borrower, and the presence or otherwise of security or surety. The co-effectiveness of these rules seems not to have been laid down with much clarity, or if such texts existed they have been eliminated in the process of transmission. Commentators interpreted the texts to mean that the allowed rates could be charged at any time, thus diminishing the force of the enlarged maxima in respect of loans of commodities. Changes in practice, especially widespread neglect of rules restrictive of the rate of interest (and emasculation of the rules relating to the maxima) seem to have enabled the commentators to perform yet again their function of redirecting the *śāstra*. In this connexion it is desirable to add that a great difference exists between rates of interest levied from borrowers by lenders, especially professional money-lenders, and rates of interest paid on deposits by guilds acting as bankers. Gains made in business, especially in expanding markets, might well include loan-tansactions, but it is not necessarily correct to assume that when a rate of 75% or 100% per annum was paid by a "bank" the depositary was obtaining legally and morally more than that proportion of interest from persons or corporations to whom he had lent the same money. In fact nearly all "banks" were traders, and in modern times these tended to be gold-and jewel-merchants or goldsmiths and jewellers.

Another form of regulation was provided by the state. Prices were certainly at some times, and perhaps at all times in some connexions, regulated by royal authority. Conditions of purchase of land sold for default of revenue, for example, would be laid down by the state. Breach of these regulations would involve penalties, such as confiscation of all property, unless the offender had some means of evading them: but whether the transactions were nullities seems not to have been discussed in our texts.

To earn a living by prohibited means was to lay oneself open to *pātaka* and, in extreme cases, to excommunication. It was essential to know whether the taking itself was effective in law, and whether the successors by inheritance, sale, etc., would be tainted by the original taker's fault. If he were unable or unwilling to perform penance this problem might arise in an acute form.

The causes of Property being established, the question was whether it was itself secular or *śāstric*. If the *śāstra* alone determined what Property was, then the effect of the

niyamas would be to prevent Property passing in prohibited or regulated cases where the *niyama* was transgressed. A considerable body of juristic opinion considered Property *śāstraikādhigamya*, "ascertainable exclusively from the *śāstra*. The *śāstra* did in fact prescribe earning, and earning for religious and social purposes, and such rules would be superfluous if Property were secular in character. Moreover, the very concept of Property, which implies law, was due to "law and order" and was one of the gifts of *dharmaśāstra* and the king's performance of his own special *dharma* towards the public. Non-*śāstric* sources could hardly be of assistance in determining the character of a technical concept.

While an ancient view insisted that the *śāstra* itself merely recorded practice, the Mimāṃsakas decided that Property was secular, and was to be ascertained principally from popular recognition. The reasons, quite understandable in the situation of the Mimāṃsā, do not concern us here. The *smṛti* in this context, they said, took its authority from its codification of pre-existing practice, similarly with grammar, whose *smṛtis* (they alleged) codified speech. The particular usefulness of this decision cannot be denied, though its general implications leave something to be desired (VI ii). As an immediate result however, the rules regulating acquisition of Property were held to be ineffective to prevent acquisition, unless they related, as in the case of theft, to popular recognition.

A very vexed question was acquisition by adverse possession. Possession could never be adverse to co-owners, persons by whose permission one held, the king, females, minors, and *śrotriya* Brahmans. To be adverse, possession must be open and known to the legal owner. Texts which allowed acquisition by adverse possession for a relatively short time were emasculated by commentators who, with the aid of ambiguous later *smṛtis*, managed so to bring about the law, that acquisition by *bhoga, bhukti*, "enjoyment, possession", could happen only when the legal owner had actually or virtually abandoned his property. The immorality of acquisition by merely occupying property which another owned struck them forcibly, and indeed the point of view is understandable in a society where the administration of justice is uneven, dilatory, and not always impartial. Moreover, as logicians in later times insisted, Property inhered in the *dhana*, and while one Property (i.e. the *svatva* of one person) was inhering it "obstructed" the inherence of another, just as subsisting blueness in a pot prevents the pot from subsequently acquiring a blue character.

There were instances where acquisition which would otherwise be reprobated, was allowed. What came to be called "legalised theft", was based upon the theory that Property existed for religious purposes, the king being under a duty to facilitate these; and that the maintenance of Brahmans and sacrifices was an object overriding to some extent individual *adhikāras*. The right of the traveller to take a little nourishment from ripe crops alongside the road seems not to come within this category.

Regulation of application: dhana-viniyoga-niyama

The "religious" or *śāstric* party contended that Property existed entirely to perform *śāstric* purposes, including, for example, the maintenance of the householder's family,

and the performance of other duties which were "equal to" or were in fact sacrifices. The wife held here husband's property, and, if she retained any of it as widow, she continued to hold it in order to secure her husband's spirtual welfare. The head of the family might exercise discretion and bind others for religious purposes (IV C iii). The king held his property in order to perform his multifarious duties. Neglect of duties endangered, according to this school of thought, the *adhikāra* itself. In most contexts these rules disappeared by virtue of the victory of the Mimāṃsā doctrine referred to above (IV B ii), but relics of them derserve attention.

Sons, grandsons, and great grandsons in some contexts were liable to pay the debts of their male lineal ancestors, provided that they were not tainted. The exact definition of the taint is a matter of some technicality, but immoral and illegal debts were for the most part outside the contemplation of this rule, and the rights of creditors were affected by the morality or legality of the original indebtedness.

The moral obligation to part with property in circumstances of vow, penance, *śrādda*, charity, and the like has been adverted to above (IV A v). The notion that property-owners are socially obliged to spend in such connexions is still very much alive, but it has long ceased to have any legal significance.

iv. Regulation of relinquishment: dhana-tyāga-niyama

A dikṣita was prohibited from making a gift; a father was prohibited from giving a son except under certain conditions; one was prohibited from giving certain animals; a prohibition (seldom heard) laid down that one must not transfer land by sale; property.

MITAKSHAṚA AND THE DAYABHĀGA

The theories of *Jimūtavāhana* and *Vijnānesvara* are being subjcted to close scrutiny. It has been proposed to abolish the *Mitāksharājoint* family, and those who resist the abolition are anxious to know what superiority the *Mitākshara* conception of the family's property rights has over that of the *Dāyabhagā*, which until 1951 the reformers wanted to extend from Bengal over all India. Naturally we cannot approciate either of the remarkable treatises unless we know which was prior to the other.

MM. Dr. P. V. Kane, on page 327 of Vol. I of his *History of Dharmas'āstra*, sums up his discussion of the problem whether *jimūtavāhana* was criticizing the *Mitākshara* or not in the *Dāyabhāga* by saying, "All that one can advance is that it is quite within the bounds of possibility that *Jimūtavāhana* criticizes the *Mitākshāra*". The purpose of this article is to show, by an analysis not attempted before, that there are no sound grounds for believing that the author of the *Dāyabhāga* ever saw the text of the *Mitākshara*. There is evidence consistent with *Vijnāneśvar's* having seen the text of the *Dāyabhāga*, but it is not conclusive. The solution is a matter of real importance because, although we are already aware of the existence of at least two different schools of thought on the subject of inheritance even before the time of these protagonists, it is so commorly said that *Jimūtavāhana* wrote in order to refute the arguments of the *Mitākshara*, that students, and

legislators, may justifiably judge the worth of the *Dāyabhāga* with reference to its quality as such a refutation. This would be, it is submitted, a great injustice to *Jimūtavāhana.*

First of all, neither writer makes direct reference to the other. But certain very late commentators, such as *Mitra Mis'ra*, imply that *Jimūtavāhana* was refuting the *Mitāksharā*. This is neither here nor there, for, as Kane says, those writers had no idea of chronology; they were concerned with jurisprudential problems horizontally, as it were, and not vertically.

There can be no doubt but that *Jimūtavahana* and *Vijnāneśvara* were contemporaries. Internal evidence in the former's *Kālaviveka* shows that the years 1991 and 1992 A.D. were almost certainly within his lifetime. The *Mitākshara* was unquestionably published between 1121 and 1125 A.D., for the details in the colophon point to the period of the greatest prosperity of the emperor *Vikramāditya VI Cālukya*. The chances, then of *Vijnāne'śvara* having read *Jimūtavāhana's* work seem on the face of the matter greater than *vice versa*. But there is a means of settling the question by a brief comparison of the point of view of the two writers on identical topics. This process is apt to be a trifle tedious, but it gives the answer to the problem.

First let us take the 33 topics on which a distinct difference of opinion can be detected between the authors. Of these, 16 instances, which we will mention first, clearly show the priority of *Jimūtavāhana* or alternatively his ignorance of the *Mitākshara* text; six instances suggest strongly that if *Vijnānesvara* is not correcting *Jimūlavāhana* he is refuting a person with similar views; the remaining 17 instances are inconclusive and equally consistent with either author's priority. There is not one instance which suggests the priority of the *Mitākshara* unmistakably.

(I) *Dāvabhāga*. I : 6 : Is "dāyabhāga" the splitting of a divided thing into parts, or a matter of a part not being united to the *dāya*? The first suggestion is wrong because there would be a disappearance of the *dāya* itself; the second also because we find people saying even when property is undivided, This is not my separate property, it is my brother's!" (The text and meaning are both open to dispute here.) *Mitākshara* I 37,17: "*Dāyabhāga*" is the arrangement of multiple ownerships, which have as their subject-matter a conglomerate mass of passessions, into individual lots in respect of these possessions. Ownership exists before partition.

Dāyabhāga. I 7,8: "*Dāyabhāga*" is not the apportioning in respect of particular objects of a right of property produced by an identity of relationship over all the possessions, because (1) relationship so long as there is another relation with competing claims will not produce properietary right over the whole, (2) it is needlessly complicated to imagine proprietary rights in the whole of the father's goods being born and being destroyed, and (3) it would be useless, through the absence of the power to use at will, *i.e.*, no proprietary right could have existed before partition. Thus "*dāyabhāga*" is the manifesting by lot or some other method of a proprietary right which never extended beyond a part of the possessions and had previously been unascertained because no ocasion had arisen

for its ascertainment. *Mitākshharā* I (i) 17-23: Five arguments listed against property existing before partition: (1) Father to whom a son is born would not be able to lay the sacred fire; (2) there would be no necessity to prohibit division of property given out of affection by a father to a joint son; (3) the text concerning gifts of affection to a wife would not be pertinent, for the husband would not be competent to give; (4) the text, "Father is master of gems, pearls and corals", shows that the sons have no birth-right in moveables. Whatever right they have in immoveables; and (5) in the case of an only son the estate passes without partition (the demise of the owner being the sole cause of property). All these arguments are met.

Dāyabhāga. I 11: Nārada's text is authority for the statement that sons have no proprietary right in the father's property before partition. Partition alone is not a cause of property, for one can partition the goods of a stranger. *Mitākshharā* and *Aparārka* and all later peninsular writers unanimously hold that the rights of the sons, etc., are by birth and that this fact is a matter of practical observation. If one looks closely at the expressions, it is clear that as regards sons, etc., there is no fundamental difference: *Jimūtavāhana* is apxious to ensure the father's independence. The point about partition alone not being a cause of property is aimed not at the Mitākshharā school but at some other. *Mitākshharā* I i 23: partition relates to effects belonging to several owners (as of course you can partition the effects of business partners); partition does not apply to goods vancant or unowned by the persons making the partition.

It emerges from all this that *Jimūtavāhana* was attacking the school which the *Mitākshharā* represents in an earlier and less developed form. His phrases, as in *Dāyabhāga* I i 6, 7 above, which he thinks portray that school's view are cruder and less exact than those we find in the *Mitākshharā*. No one who would have read the latter could have used the more awakward expressions. It was not a *divided* thing which was split into parts, nor was it *identity* of relationship which produced the proprietary right. The *Mitākshharā* gathers and deals with more objections than the *Dāyabhāga* itself produced. It adds the point, though with tongue in check, that if the birth-right were to be denied a stranger could with impunity run off with the deceased's goods before the heirs partitioned them. It is worth adding that *Jimu¯tavāhana* did not enter into the discussion on the origin of *property*, whether or not exclusively ascortainable from the *s'āstra*. His acumen could here have been applied with excelleat effect: at the least he could have demonstrated again his famous "moral obligation is not logal obligation" theory.

(2) *D ā¯ y a b h ā¯ g a*

I 13, 14: It is said that birth, the act of a son, is an act of acquisition, and that birth alone makes a son proprietor in his father's estate; this is a mistake, for *Manu* says that the brothers have no power while the parents live. *Dāyabhāga* I 6: "Have no power" does not mean "have no independence" for here we are not told that they have any proprietary interest. *Mitākshharā* I i 27-30 lays out the details of the son's brith-right in the following way: (*a*) sons have the right to inherit on the father's death (*Jimūtavāhana* does not deny

this); (*b*) sons are co-owners with their father in the grandfather's property; (*c*) sons cannot prevent the father's disposing of his ancestral moveables for special necessity or his self-acquired moveables for any purpose; (*d*) the father must obtain the son's permission to alienate the immoveable estate, however acquired, under any circumstances unless (i) there is an emergency and (ii) the co-owners are minors or incapable of giving consent. *Mitākshară, Aparārka, Varadarāja* and later southern authors insist that *Manu's* text does mean that sons lack independence in dealing, but not ownership. It is clear that had *Jimūtavāhana* read this description of the powers which the birth-right gave he would have been in a position to make a powerful criticism of the theory underlying them. The *Mitākshară* view is based upon a compromise between the traditions of northern and southern schools and, like most compromises, offers a wide scope to critics. A conclusive passage is *Dāyabhāga* I 19, where *Jimūtavāhana* calmly says that if sons had ownership in their father's property partition could be enforced by will of the sons and against the will of the father: in the south by this time such partitions not only occurred (in respect of ancestral property) but the *Mitākshară* had deliberately sanctioned them. *Jimūtavāhana* clearly did not know this, for we know him to be a man interested in practical experience, and not a mere theorist.

(3) *Dāyabhāga* I.38, 39: There are two times for partition: when the father's right of property ceases and by his choice. It is wrong to see *three* periods. *Mitākshară* I ii 7 gives five periods, four during the lifetime of the father and one after his death. It is unnecessary to go into the details, which are easily available, but the third time, i.e., when the father is indifferent to wealth and not sexually active, serves as an answer to *Jimu¯tavāhana's* objection to a period on the ground that there could not according to that view be a partition of the father's property if he became a hermit. This again proves that *Jimūtavāhana* was aiming at an earlier and less considered account of the times of partition.

(4) *Dāyabhāga*, II 9 and III 22, 23: *Yajnāvalkya's* text, "the ownership of the father and son is the same in land acquired by the grandfather, etc.," is according to *Udyota* an explanation that when *A*, having two sons *B* and *C*, is predeceased by *B*, who himself leaves a son *D*, and then A himself dies, *C* does not take the whole estate, but shares it with *D*. *Mitākshară* I v 3-9 explains that the text was required to meet the argument that as, according to the previous text ("among claimants by different fathers the allotment of shares shall be by regard to fathers") the sons of each brother get the share of their respective father between them, when the father is separate or has no brothers one of two things happens: either the maxim applies only when the father is dead, and therefore the sons cannot demand a share of the father's father's property in the father's lifetime, or, if a partition does take place, it must be at the pleasure of the father. Here it is clear that the *Mitākshară* copes with arguments, similar to those brought forward by *Jimūtavāhana* and leaves nothing to be said in the way of bringing out the meaning of *Yājnavalkya* II 121. Had *Jimutavāhana* seen this interpretation he would have been bound by the conventions of his science to meet it in some way. No, writer of consequence could ever pass an important argument of an opponent by, on pain of being ridiculed as ignorant

by contemporary *s'āstris.*

(5) *Dāyabhāga* II 11: If sons had birth-rights in the property of the grandfather during the life of the father, then all the sons by all the fathers would at a general partition take equal shares with their fathers in the whole. This argument is fully answered by *Mitākshara* I v 2, which *Jimūtavāhana* cannot possibly have seen, as it demolishes his position.

(6) *Dāyabhāga* II 22: *Yājnavalkya* says, "the father is master of the gems, pearls and corals and of all; but neither father nor grandfather is so of the whole immoveable estate." Moveables inherited from the grandfather, or otherwise acquired, are owned exclusively by the father, *Mitākshara* I i 21 : the text refers to immoveables descended from the father's father; the text "By favour of the father clothes and ornaments are used, but immoveable property may not be consumed even with the father's indulgence" is to the same effect. It is to be noticed that *Jimūtavāhana* does not quote the latter text—it is contrary to his position—but had he read the *Mitākshara* he would have been obliged at least to circumvent it. We are the losers, because his method of interpreting the text would have been interesting.

(7) *Dāvabhāga* II 49: If a father and son were to share equally the grandfather's wealth, the fact that the father must have a double share leads to the conclusion that if *A* and his son *B* and his brother *C* were dividing the property of his father *X*, *C* would be left with a fifth share. This situation could not have been suggested seriously by anyone who had read the *Mitāksharū* which in I v 2, 7 and I iii 3-4 makes such a conclusion impossible according to the "birth-right" school.

(8) *Dāyablugā* III ii 36, 39, 40, 42: The rule that daughters who are unmarried are entitled to ¼th of a son's share on a partition between their brothers is to be interpreted elastically so that the sons will not be impoverished *Mitākshara* I vii 5-14 is an answer to the difficulty and a refutation of the solution which *Jimūtavāhana* offered. The ¼th is obligatory, but will not impoverish the sons because it is a ¼th, not of the share which the son might have taken had there been no daughters, but of what the daughter would have obtained had she been a son.

(9) *Dāyabhāga* VI ii 38-9: A single heir recovering by his own labour land formerly lost may retain only ¼th in addition to his share on a partition. *Mitākshara* I iv 2 and v 11 shows that *Vijnaesvara* believed that the consent of the other joint members was a vital factor in deciding whether the acquirer in such a case retained the ¼th or not: the *Mitākshard* proviso is a protection against fraud which *Jimūtavāhana* would have incorporated, though perhaps in a modified form (e.g., "with consent of father") had he known it.

(10) *Dāyabhāga* XI iii 1 and iv 3: Father comes before Mother in the order of heirs. Though the mother surpasses the father in the respect which is due to her this does not prefer her in this connection. Mitākshara II iii 1-5 gives more than one reason why the mother should be preferred. Grammatical, sentimental and physiolgical considerations are urged, to which *Jimūtavāhana* would have been bound to give an answer had he been

informed of them.

This completes the list of those instances which clearly point the way of the present writer's opinion: it remains to mention those which tend to show that *Vijnānesvara* was correcting either *Jimūtavāhana* or some writer of his school.

(I) *Dāyabhāga* II 7: The death of both parents is one period of partition of an estate inherited from a grandfather, and the other is the choice of the father when the mother is past child-bearing. Mitāksharā I v 8 is a direct contradiction of the second half of this proposition while the first half is answered by the whole of I vi.

(II) *Dāyabhāga* II 20, 35, 37: Father can take a double share even of ancestral property. *Mitākshara* I v 7: The text enabling a father to keep two shares applies only to self-acquisitions.

(III) *Dāyabhāga* II 21 : The verses of *Manu* and *Vishnu* which say that a father recovering paternal wealth need not share it with his sons seems to suggest that a partition by the will of the son could occur in respect of ancestral property; but the true meaning is that a father, setting about a partition, need not distribute the grandfather's wealth which he has retrieved. The *Mitākshara* was not obliged to introduce this verse, but we find in I v 11 that the text obliges the father to divide with his sons the property acquired by his own father, however unwilling he may be, if they demand it of him. The meaning is better explained: the property is not that lost by the grandfather, but that lost by another ancestor and not recovered by the grandfather, for the latter is already accounted for by a different rule.

(IV) *Dāyabhāga* IV ii shows a different conception of *stridhan* from that which we find in *Mitākshara* II xi 12-25. Where, in *Dāyabhāga* IV ii 13-20, *Jimūtavāhana* says that "issue" in *Yājnavalkya* means the issue of the mother (i.e., sons) instead of that of the daughters, *Mitākshara* in II xi 17 makes it plain that the "issue" is that of the daughters.

(V) *Dāyabhāga* XI vi 18: The text of Manu ("to the nearest *sapinda* the inheritance belongs") does not indicate nearness according to birth. Mitākshara II iv 5 quotes the text in order to show that those of half-blood are more remote through difference of mothers. Uterine half-blood, incidentally, were not contemplated by either author with reference to inheritance.

(VI) *Jimūtavāhana* agreed with *Vijnānesvara's* predecessor, *Viśvarūpa*, that a coparcener who concealed joint property was not guilty of theft. *Mitākshara* I ix 9: It is crimial to withhold common property, and sinful. The kidney bean illustration, which *Jimūtavāhana* says had been used in a puerile manner by *Bāla* (=*Bālaka*), is carefully repeated in such a way as to show its proper application to this problem.

This survey would not be complete without a glance at the other notable divergences between the writers. These, as stated above, do not provide any conclusive evidence.

(i) The definitions of *dāya* are totally different. The full significance of the difference has been brought out admirably by Mr. I. S. Pawate in his "*Dāyabhāga*", published at

Dharwar, 1945. *Dāyabhāga* I 4: *Dāya* comes from the root *Dā*. It is the constituting of another's property after annulling the previous right of a person who had died, etc., but there is no abdication of the deceased, etc., in respect of the property. *Mitākshară* I i 2: *Dāya* is wealth which becomes the property of another solely by reason of his relationship to the owner.

(ii) *Dāyabhāga* I 42: *Sankha-Likhita* says that a partition does *not* take place if the father does not desire it, and the reading "if he be incapable of business, partition of wealth takes place" is corrupt. The *Mitākshară* quotes *sānkha-Likhita*, but not to this effect. Vijnānesvara quotes a text from that source which support his case, but which *Jimūtavāhana* had not noticed in his account. The topic of dividing the goods of the maternal grandfather (*Dāyabhāga* I 45) is nowhere noticed by the Mitāksharā at all. The general rules cover it adequately, and it is an emanation of Jimūtavāhana's eccentric interpretation of the texts allowing sons to step into control when the father in incapable.

(iii) *Dāyabhāga* II 5 and III 1: Division of the father's estate ought to be made after the death of the mother. This is based simply on *Manu's "ūrāddhvam pitus'ca mātusca"*. Mitāksharā I vi is based upon the assumption that a partition can take place in the lifetime of the mother: posthumous sons are accounted for.

(iv) *Dravyam*, of course, means "goods" or "money". *Dāyabhāga*, II, in a curiously significant manner explains it as "slaves" in *Yājnavalkya's* text. *Mitākshară* I v, 4 goes out of its way to explain that *dravyam* means gold, silver etc.

(v) *Dāyabhāga* II 59: *Ekaputra* in the text of *Sankha-Likhita* means "son of one father." *Mitākshară* does not answer this eccentricity.

(vi) *Dāyabhāga* II 71: Father takes two shares of the property acquired by his son. Mitakshara I iv, 12: "It is well-known that what is acquired by one belongs to him only and to no other person." Incautious, but one would think that if *Jimutavahana* had read the *Mitākshară* he would have had to confute the texts which support the statement.

(vii) *Dāyabhāga* III ii 32: Only son-less wives of the father should have a share in a partition at the father's option. *Mitākshară* I ii 9-10 and vii 1: All wives then take a share.

(viii) *Dāyabhāga* IV i 23: Where a husband has given his wife immoveables she may not alienate them even after his death (*Nārada*). *Mitākshară* maintains silence on this topic, implying no restriction.

(ix) *Dāyabhāga* IV i 11: The limitation of 2,000 *paṇas* on the widow's inheritance is to be rejected. *Mitākshară* does not mention it, but refutes a similar view of limiting the widow's estate attributed to *Srikara*. The 2,000 paṇas limit is found in *Kauṭiliya*, *Vyavahāra-nirnaya* and *Smṛti-candrikā*, and is quoted in a verse of *Vyāsa* by the southerner *Haradatta* on *Gautama* 28, 19.

(x) *Dāyabhāga* V deals with outcastes. No reference there to their daughters. *Mitākshară* makes a point of protecting the daughters, in II x 12-3. *Aparārka* is even more explicit.

(xi) *Dāyabhāga* VI i 17-20: Gains of learning even without the use of joint funds must be shared with those coparceners who are equally or more learned. *Mitākshară* I iv 13,

15 partially answers this and denies it by implication.

(xii) A severe poser is set by the distinction between *Dāyabhagā* (XI i 1-26) and *Mitāksharā* views on the estate to be taken by a widow. *Mitākshara* says that the widow of a separated unreunited member takes his entire property. The Dāyabhāga makes no such restriction. In all probability the text of the *Mitākshara* does not give us the views of the author fully. Epigraphy and the evidence of Jaina law for instance show us that the old texts which did allow the widow to inherit when issueless contemplated her taking her husband's interest in the joint family property.

(xiii) *Dāyabhāga* XI ii 30: If an unmarried daughter-heiress dies, the inheritance goes not to her heir but to the married daughter and then to a daughter's son. The *Mitākshara* saw women having less obstructed ownership than men, and hence makes no such provision.

(xiv) *Dāyabhāga* XI v 13-37 and *Mitākshara* II ix 1-12 deal with the difficult passage of *Yājnavalkya* on inheritance from reunited person. The latter is much more thorough, answering a question which *Jimūtavāhana* does not touch, i.e., the result when reunited full brothers compete with unreunited half brothers by the same mother, and when reunited half-brothers compete with unreunited half-brothers.

(xv) The whole of the *Dāyabhāga* section on inheritance reeks of the religious benefit theory explained in a most comprehensive manner. *Mitākshara* denies that *sapiṇḍaship* is a matter of religious benefit but in such an odd manner that one may doubt whether he is correcting *Jimūtavāhana* or a predecessor of *Jimūtavuhana* of whom we have now lost sight. We read, on *Yājnavalkya* I 51, that *sapiṇḍaship* must not be understood as a handing on of the *piṇḍa* which has to be offered in the *śrāddha*, for if that were the case there would be no *sapiṇḍaship* with one's mother's issue or one's brothers' sons (one must read here "*bhrātṛvyapitṛvya*"), paternal uncles and so on. This is the strongest piece of evidence for *Vijnānesvara's* never having read the *Dāyabhāga*, though it neither strengthens nor weakens the case regarding *Jimūtavāhana's* having read the *Mitākshara*. Of course *Jimūtavāhana's* explanation of the significance of *sapiṇḍaship* in inheritance is very much wider than this. *Vijnāneśvara's* point is that one's uterine brothers, one's brothers' sons and one's paternal uncles cannot be called *sapiṇḍas*, if one understands the word in the sense of "those who have identity of *piṇḍa*, i.e., those who offer the same type and quality of *piṇḍa*". At that rate brothers alone would be *sapiṇḍas*. Since that is not the case, the true meaning of *sapinda* must be "connected by particles of the body." But it must be repeated that the *Mitākshara* nowhere distinctly denies that the right to perform *śrāddhas* has a significance in determining priority of heirs.

(xvi) Sarvadhikari, in his analysis of the arguments of the two authors has shows that *Jimūtavāhana* desired agnate and cognate *bandhus* to take in a different manner from that envisaged by the *Mitākshara*. Cognate *bandhus* were intended to take immediately after agnate *bandhus* in the same class, whereas in the *Mitākshara* all agnates precede cognates. It must be remarked that the whole analysis depends upon a number of conjectures, and

the subject is still in an unclear state. At any rate no evidence exists that the one author was correcting or amplifying the views of the other. Had a clear statement been found the present doubts would not exist, and Allahabad and Madras would be at one on heritable *bandhus.*

A final point needs to be mentioned: *Jimūtavāhana* often pours scorn upon an opponent. There is no ground for thinking that this is *Vijnāneśvara. Jimūtavāhana's* chief opponent (*Dāyabāgha* II 64) is "he who continually explains *Manu, Gaulama, Dakṣa* and others in a vague sense" and thus "demonstrates his own unsettledness." This is *Bālaka,* who is probably the same as *Bāla,* mentioned in *Dāyabhāga* XI i 51 and ii 27. Kane, op. cit. pp. 283-4, tells us that he was an easterner, not long prior to *Jimūtavāhara* himself.

Kane op. cit. on p. 327 quotes some occasions when *Jimūtavāhana* in his *Vyavahāramātṛkā* seems to refer to the text of the Mitakshara. There is no clear reference, and the one which Kane has thought apt for quotation is a commonplace, a stock illustration of types of absurdities in plaints.

From internal evidence, after reviewing all the important places where conflict exists between the authors, it seems undeniable that the old belief that *Jimūtavāhana* wrote his *Dāyabhāga* to refute the *Mitākshara* is unfounded. There is so much against it, and nothing for it. *Jimūtavāhana* did not lack opponents even in 1100: both schools of thought were very old already. *Jimūtavāhana's* own contribution, a new evaluation of the notion of *sapiṇḍaship,* is totally independent of contact with the *Mitākshara.*

A piece of external evidence completes the picture. The date of *Aparārka* is well known. Ample data fix the compliation at about 1125. (See Kane, History of Dharma Sāstra, Vol. I, p. 334). It can be suggested with reason that a legal author who did not know *Aparāka's* commentary could not have known the *Mitākshara* either. Now in the commentary on *Yajnavalkya* II 121, *Aparārka,* or his editorial committee, used an argument which would have been of great service to *Jimūtavāhana* had the latter wanted to refute the *Mitākshara.* It was used to refute those who said that a son could not have rights by birth because this would prevent the father of a new-born son from performing *agnihotra* and other obligatory rights which must be performed with one's own property. It is said, "even if his property is common to himself and his son, nevertheless he is able to perform the *agnihotra* and so on, either by the (implied) consent of his son or by the earning of additional property, the son's share having been put to one side; *and it is not the case that the genesis of the (father's) owership comes about by a partition since that would deprive the father of ownership prior to the partition.* For "partition" is the arranging....."

One of the logical weaknesses of the southern conception of family-joint-ownership as expressed in the *Mitākshara* is the implication behind the twin definitions of *dāya* and *vibhāga.* All the *dāyādas* have proprietary rights in one another's property by reason of their relationship; when there are many ownership in respect of the aggregate a partition arranges who will be *apratibandha* owner of which part of the whole. It follows that until a partition takes place among *dāyādas* of the same class and bearing the same relationship within that class, no one should be able to say who is independent owner of a particular part. But we find that the southern writers are content to talk of partitioning the "father's"

or "grandfather's" property as if there were a superior proprietary right existing prior to the partition in the father or grandfather. How is this? Surely if all sons, for example, have rights by birth over the property of their father, the second son would be born at a time when the father would have no separate property in which he could acquire rights, quite apart from the consideration that the father's brothers and father would have *sapratibandha* rights over it already. In fact if partition is the only means of deciding who is the owner, broadly speaking, of which part of the family property, before a partition a father would have no ownership at all; and yet we see that practice and the smr+ti texts give the father exceedingly wide powers.

Had *Jimūtavāhana* perceived this particular mode of attack upon the Muākshārā position he could hardly have failed to employ it. The peculiar skill which is required of a legal author working in a field of this nature demands the utilisation of all possible arguments. It is possible that *Aparārka* did not realise that his commentary was supplying an argument against himself. The shrewed Bengali would not have rejected a gift of this nature. Hence we conclude that *Jimūtavāhana* did not know *Aparārka's* publication and this tends to support the general conclusion that he did not know the Mitākshārā either.

Modes of Sannyāsīs and the reform of a South Indian Maṭha

There are some features of the ancient Hindu law which are still alive today, in spite of the contention (heard from time to time) that the *dharmaśāstra* is dead and no one need trouble himself to learn about it. Miniskirts are to be seen even in Poona, and the ancient *munis* must fry their own fish. Below I attempt a study of a fascinating inscription from Tamil Nad; but before anyone writes it off as irrelevant to the modern world I must draw attention to very recent case-law in which these topics figured.

Religious endowments are a magnet for money. Widows still make gifts out of their hushands' estates, provided, that is to say, the deceased husbands have not bequeathed a great deal of them in that direction already. *Maṭhas* (in Anglo-Hindu language maths, or even 'mutts') are a well-known variety of 'religious endownment'. Two questions have come to the fore. Can Sūdras be head of *maṭhas?* And can married men, family men, occupy places much more naturally reserved for celibate teachers, founders or leaders of a school of Hinduism, dedicated to religion and divorced from the world and its pleasures? The *śāstra*, as understood in Anglo-Hindu law, conceives only a celibate and a renunciate as a *sannyāsi*, and only a *sannyāsi* as the head of a *maṭha*. When it is a question of the right to act as mahant (= *maṭhādhikāri)*, or to succeed to one deceased, litigants are heard to contend that the deceased was no real *sannyāsi*, and that, unless a custom to the contrary could be proved, the law to be applied must be that of Hindu males who are not *sannyāsīs*. Recent decisions have repelled these contentions in the individual sets of facts. It seems to be the case that, even where a custom cannot be proved contrary to the book-law, Sūdras can be *sannyāsīs* (though not of the Vedic, i.e., *srauta* or *smārla*, type), and that too whether or not they have actually abandoned the world, whether by

any particular ceremony or not, and even where they are married; the community must accept them as mahants, whatever the book-law may say on the subject. Such decisions have the merit of flexibility and realism, and the rigidity of the Anglo-Hindu law is properly moditied by them.

On the other hand, the case-law reveals only too clearly the evils ot *gṛhastha* (i.e., householder) mahants, when the squabbles between the surviving members ot Vaiṣṇava Mahāprabhūs' families waste their estates, private and trust-endowed alike. But when the requirements of the modern world and ancient tradition conflict the court listens attentively to the ancient *śāstras*, and their exponents.

The inscription is No. 135, from Jambukēśvaram, dated Saka 1506 = A.D. 1584, at the beginning of the reign of Venkaṭa I, reported by C. R. Krishnamacharlu in 1940 in his *Annual Report* on *South Indian Epigraphy* for 1936-7 at §. 79, the inscription being transcribed il1 roman characters at pp. 92-3. The editorial note reads as follows:

> "It is couched in a high-flown *maṇipravāta* style and appears lo be an apologia for the selection of a married person (gṛhastha) to the pontificate o! lhe Pāśupatamaṭha at Tiruvānaikkā, which had till then been probably in the keeping of a celibate only. The quaint style of the record bristles with bombastic quotations from several works in seeming support of this transition, and affords interesting reading."

The reasons for the change are paraphrased in English, and the whole was taken more or less word for word by T. V. Mahalingam in his article at *Journal of Oriental Research* (Madras) Vol. 25 (1957), pp. 78-9. I found the thing very interesting. The inscription is unique, but it supplements what we know from other references to the *dharmaśāstra* and related materials in a few other inscriptions. A reference to the *Mahābhārata* and "principles followed by kings" appears with reference to relief from taxation in an eleventh-century inscriptions. A galaxy of *dharmaśāstra* citations, with the Brahmins' deductions from them, appear in twelfth- century inscriptions concerning the status and privileges of Rathakāras. What we have here, however, is what is virtually a public decision made in the name of a deity, with the consent of interested Brahmins, but with the intended effect of a legal settlement of a pecuniary, and not merely social bearing, like a scheme framed and decreed in the Chancery division in England or by the High Court in India. I felt that the editor's sceptical tone was a little harsh, and perhaps prejudiced. I entered into a brief correspondence about the record with D. C. Sircar (then at Ootacamund) in early 1959. It is only now that I have an opportunity of improving upon my reference to the inscription in my *Religion, Law and the State in India*.

Neither the editor nor Mahalingam attempted to assess the meaning or value of the event described in the inscription, and, as so often, many technical terms were left untranslated and unexplained. I cannot hope to improve upon their handling in all respects, since time and effort, though deserved by this inscription, are bound to be limited by other competing concerns. But we shall, I hope, have a better chance of estimating how such matters were handled and why.

The Pāśupata sect was evidently an ancient Saivite sect long established in South India, and particularly strong in the Tamil country. The sect's religion and religious practices were not of a type which is nowadays considered very edifying; the preoccupation with externals and observances, the endless concern with vows and austerities and marvellous aberrations from normal living in a parade of holiness—all these features make the behaviour, let alone the doctrines, of this ancient religion less than attractive even to the simpler villager of today.' Other forms of Saivism, with greater emphasis upon morality and devotion to the deity to be expressed in terms of personal conversion and reform, have become more popular. But at the times with which we are concerned Pāśupatas were powerful and significant. I think it will be admitted that it is a feature of the Indian scene that competing religions are less competing faiths than competing social assertions. The group identifies itself with a particular religion or sect, endows it, and seeks to enhance its own prestige relative to its competitors through and by means of its religious activities. In this way sects rise and fall, and allegiance waxes and wanes, sometimes without any rational explanation. In these days of anti-caste agitation it is odd that caste-sentiments should figure in this development. But field studies in different parts of India show that they do, and perhaps they always have done.

The law relating to maths is a well-known, but not an edifying, chapter of the Hindu law applied by the Indian courts. In a recent case the learned judge expatiated on the unseemliness of the dispute between two would-be mahants. Cases in which math properties are wasted in squabbles over the appointment of the next mahant are many, and litigation up to the Supreme Court about rights in and to math properties is frequent. There is no doubt but that maths of all denominations and sects attract money and accumulate wealth, and some even take to money-lending as their primary pursuit. It is odd that the more the mahant seeks to live an unworldly life the more gifts are showered upon him and his math. The genuineness of the mahant is thus an essential question about him, and Indians, with their characteristic mixture of optimism and cynicism, equate *sannyāsis* who are mahants with bogus spiritual teachers of the kinds which Kauṭilya urges the king to enlist in his secret service: the holy and the fraudulent are somehow symbiotic, and no one minds. Until, that is to say, some particularly appalling scandal break out, whereupon the "king" must take action, and the endowment is "visited" and "reformed," much after the style of the Hindu Religious Endowments Commission, which was a sort of royal visitation.

When we study this inscription we wonder whether the reform, by which the incumbent mahant was "ordered" to become a gṛhastha, whereas he had previously been (we are bound to assume) unmarried (whether or not he was celibate), was a reform intended to deal with a situation in which the math had fallen into decay due to a succession of unchaste and disreputable *sannyāsi* mahants (a reform which would occur to the mind of a student of the Reformation in western Europe), or whether it was something else. My reading of the inscription leads me to think it was something else, conceivably like this. The math was flourishing, though physically, it seems, a small affair, in association with the temple, placed strategically in the rich Kaveri valley. The Pāśupatas were no

longer in opposition as they once were, as Tamil radicals, to the Brahminical faiths which I had dominated the scene and obtained ascendancy; they no longer took the place of the ancient opponents of Brahminism in the South, namely Jainism and Buddhism, which had vanished. Other sects of Śaivism would maintain their religious hold upon those who were doubtful of the value of the Brahminical *varṇāśrama-dharma*, always a suspect import into the extreme South: devotion to a personal deity would absorb the religious energies of Śaivites and Vaiṣṇavas and undermine the spread of Brahminical doctrines of observances, of sacraments, and of an eternal *varṇa* hierarchy. Yet the unification of the culture demanded a synthesis of these apparently conflicting trends and desires. Those whose religion was utter devotion to Siva wanted still to be part and parcel of the caste system. and there was no caste theory other than that expressed by Brahmins in the *varṇāsrama-dharma*. An antinomian and defiant archaic Dravidian religion became at some points compalible with normative Hinduism, as the religious teachers, absorbing the Brahminical learning, offered to the generality of the public everything that the Brahmins had to offer. Thus castes higher in the scale than the humble agriculturalist gave their adherence to Śaivite sects such as the Pāśupatas, and the result was (as I think) that the Pāśupata doctrine had to become "respectable." In order to teach *varṇāśrama-dharma*, no doubt with many modifications to meet the requirements of local prejudices, the teachers, the maṭhādhipatis, had to be orthodox themselves, and had to take on Brahminical observances as well as the vows of the Pāśupatas. The problem was whether the two types of observance were compatible. It is notorious that in *purāṇs* and *tantras*, persistent and successful efforts were made to integrate popular notions and notions essentially competitive with Brahminism, into the orthodox normative system. And Brahmins themselves taught doctrines and practices which had no Vedic authority, but relied for their authority upon *sadācāra*—the fact that learned Vaidik Brahmins believed in and practised them.

In this case what I believe happened was that a fashion was started of appointing to the head- ship of maths married men who would found dynasties of holiness, performing the rituals open to householders, carrying out the duties appropriate to that *āśrama*, whilst serving as teachers and spiritual preceptors of Pāsupatas of all castes. The *dharmasastra* itself was not clear on the point whether a true *sannyāsi* could perform all the functions mentioned. How could a *sannyāsi* be the effective (as opposed to nominal) head of a religious institution. It is established in Hindu law that the essential of a math is that religious instruction is given there to students. If it is still the case it was even more so in earlier ages. And regular institutional instruction implies an endowment, and a business head. A householder head would make much better sense, and it is clear that in the next century Jambukēśvaram knew families of Śaivite spiritual gurus, as their surviving inscriptions testify. The math would also be a *guru-kula* in the traditional sense. But the fascination for the life of the perpetual *brahmacārī*, the awe attached to the (supposedly) perpetual celibate, went a long way towards securing the public's regard, towards certifying the holiness of the establishment, and thus bringing in funds. To convert an existing post

as head of a math, and, at the same time, shebait of the temple with which it was immediately associated, into a different kind of post, the holder of which would enjoy householder status and comfort whilst retaining the privileges and the profits, was something that could be achieved only by the concerted action of the sect, represented by their most prestige-worthy members, upon grounds which must be transparently lawful and righteous at the same time, with the consent and approval of the ruler, whose support would be needed to restrain counter-reform movements which would otherwise put forward an anti-mahant (this time a confirmed and conforming *sannyasi*) as their protagonist.

The *dharmaśāstra* absorbed and regularised the concept of the perpetual celibate, the *naiṣṭika- brahmacārī*, but he remained attached to his teacher. The idea of a sannyāsi heading a wealthy establishment, even an expert in agriculture and money-lending as we know them today, did not fit with *śāstric* notions. There was never complete certainty whether a man might pass from *brahmacarya* to *sannyāsa* without going through the intermediate *āśramas.* However, it was open to argue that the true teaching of the *śāstra* was that even twice-born should pass through the house- holder stage, and there were reasons to believe that a Brahmin must perform the *karmas* laid down by the *sāstra* if he was not to lose esteem as a member of historically the Brahmin head of a wealthy and influential math could not afford to risk diminution or loss of prestige: once, at any rate, it had been accepted that orthodox Brahmins were natural, or possible, heads of Pāśupata maths.

This, then, is what this Inscription may mean. Of the two alternatives, celibacy, and householder status, both could be supported on śāstric and traditional grounds somehow. The legal texts, and the religious texts of the Śaivites were called upon to authorise the latter position, and the decision was framed as an order directed to the mahant from the god Śiva, pronounced by his hereditary representative, the shebait (it seems) of the principal temple in association with which the mahant's rights had been created, a gentleman, no doubt, of considerable prestige in the state government as well as that of religious affairs. The authors of this *vyavasthā* knew very well that their decision would be contradicted. It obviously was capable of contradiction. Householder mahants apparently existed In the Tamil country but history shows that the concept died out, and it is taken for granted there nowadays that mahants are sannyāsis. But the authors of this document went about their work in such a way as to suggest that it was clear to them that government, the State, would not Interfere to reverse the decision, but would, on the contrary, uphold it as an authentic legal alternative against all possible dissidents. The curses pronounced upon any individuals who Interfere with the arrangement show that the Brahmins of the locality and the spiritual leaders of the sect had made up their minds in favour of the orthodox complexion which the sect's doctrines were to take on from thence forward, and it was assumed that the resulting gain in prestige to the math and its adherents could operate only in favour of the society, the culture, and the *śāstric* norm.

The inscription opens with the statement that It is the *tirumugam* or sacred order addressed to Candraśekhara-guru by one Ādi-Caṇḍeśvara-devar, who describes himself as *mūla-bhṛtya* of the (god) Tribhuvana-pati in the trmple fescribed. I suggest that he was named after the Ādi-Caṇḍeśvara- deva (Siva) who was the deity of Tiruvarur, Nagapattinam taluk, Tanjore district, rather than the deity of the same name at Sivapuri, Tiruppattur taluk, Ramanathapuram district. I regard it as highly likely that he was born in Tiruvarur, perhaps the first son of his parents. He seems to have become the manager of the whole temple complex, responsible to government ultimately for the good conduct of the entire religious trust in which the math in question was physically situated. I wish we knew more about him. The verse at the end of the inscription suggests that he, as a patron-devotee of Candraśekhara-guru, was an official as well as an endowment trustee *(dharmakartā)*. The voluminous works of T. V. Mahalingam and B. A. Saletore about Vijayanagara throw no more light on the man, and it may be that he was politically quite obscure.

The operative part of the "order" falls into two parts: (1) Candraśekara, in his quality as "our" (i.e., Siva's) *tambirāṇār*, i.e., *maṭhādhipati*, shall continue to perform and enjoy the rights and obligations of worship of the deity, service of the idol, superintendence of the temple, drawing up of accounts, the right to mark devotees with the seal *(muddirai)*, independence of management, and the Pāśupata-vow from teacher to pupil in succession; (ii) he shali do this as a householder, performing the Pāśupata rites and the *karmas* of sacrifices (e.g., *pañca-mahā-yajña*, presumably), worshipping, etc., for the god Jembunāthar Akhilāṇḍa-īśvara, but with succession from father to son, on the basis of this order, as long as moon and sun endure, and upon that footing succession shall be to the son who is eldest in age and learning and he must maintain his brothers and protect the endowment.

The most interesting part of the document is the list of quotations supporting the revolutionary reform which this involved. It need hardly be emphasised that to convert a (śāstric) *sannyāsi* math into a *gṛhastha* math on this basis would not merely subsidise the mahant's enjoyment as a householder (he might have a succession of wives, since the presence of a valuable endowment would attract an unceasing flow of offers of girls in marriage), but also hurden the math, and there- fore its devotees, with generations of collaterals of the reigning mahant, who would be kept in idleness at the expense of the endowment (unlike the families of *gurus* who partition their disciples and all perform religious functions on tour). A move from the one kind of math to the other would thus be an example of conspicuous consumption, in itsell tending to raise the prestige of the math. I now reproduce the citations which supported the decision.

dirgha-kāla-brahmacaryam, dhāraṇam, ca kamaṇḍaloḥ ।
narāśvamedhau madyam, ca Kalau variyā dvijātibhiḥ ॥

"Lengthy *brahmacarya*, the carrying of the water-pot, sacrifices of human-beings and horses, and spirituous liquor are to be avoided by twice-born in the Kali Age."

This is cited as from the *Parāśara-Mādhaviya*, the then leading legal digest of the Tamil country, where it is indeed to be found without difficulty. Its ultimate source is typically vague. Lakṣmīdhara attributes it to the *Brahma-purāṇa*, as does Aparārka. The *smṛticandrikā*, another lawbook of importance in the Tamil-nāḍ, perhaps now regarded more highly than Mādhava's work, attributes it to the *Aditya-purāṇa*, but alas the *Nirṇya-sindhu* attributes it to the *Adi-purāṇa*. It may once have existed in all three." From the text our Inscription gratuitously concludes that lengthy celibacy is *niṣiddham* ("forbidden")!

yo vidān brahmacāri gṛhastha yatir vā ।

This is attributed to the minor *upaniṣad* called *Kālāgni-rudropaniṣad*, which is evidently a holy book of the Pāśupata sect. It is indeed to be found there at para. 9, which however reads, in the most careful edition,

tripuṇḍra-vidhiṃ bhasmanā karoti । *yo vidvān brahmacāri gṛhastho vāna-prastho yatir vā samasta-mahāpā-takopapātakebhgaḥ pūto bhavati* । *sa sarveṣu tirtheṣu snāto bhavati* ...'... he who performs the marking called *tripuṇḍra* with the (holy) ash, being learned, whether he be *brahmacāri*, householder, forest-recluse, or renunciate, becomes cleansed from all the greater and lesser sins, becomes as if he had bathed in all the *tirhas* (and so on, eventually becoming united with Śiva, without fear of rebirth—so says the blessed Kālāgnirudra).'

Now the inscription's text shows that our copyist did not copy correctly, as the word *vānaprastho* was omitted through that common copyists's error, haplography.

vralam Pāśupalam śuddham dvādaśābdi-takṣitam ।
mat-bhakte tat pradānvyaṃ, māheśvara-parāyaṇe ॥
gṛhasthebhyo viśeṣeṇa yatinām to agnivarjjitam ।
aupanāyanike vanhau śrotriya-brahmacāriṇām ।
vāyavye 'tha Pāśupatam sākṣāt vratam dvādaśa-māsikam ॥

The next text is attributed to the *Sanatkumārasamthitā*:

'The pure Pāśupata vow, which lasts twelve years, should be committed to the devotee who is devoted to the servants (ministrants) of Mahetvara (Siva): especially to householders; but without fire in the case of renunciates; in the fire of the Vedic initiation in the case of *brahmacāris* who are *srotriyas* (faithful to Vedic *karmas*). Where the windy humour is disturbed (i.e., in ill health?) the Pāśupata vow lasts actually for twelve months only.'

This text plainly claims that even the most orthodox Brahmins can be initiated into the Pāśupata sect, and householders are indeed preferred.

It is difficult to track down and verify the text because the name *Sanatkumāra-samhitā* is given to four works, (i) the *purāṇa* of that name published In the *Purāṇa-smhitā* in the Chowkhamba Sanskrit Series, in which the text does *not* appear; (ii) a portion of the *Skanda-purāṇa*, which seems a most likely choice; (iii) a portion of the *Brahmāṇḍa-purāṇa* and (iv) a portion of the *Rudrayāmala*, which was cited in *dharmaśāstra* works and even in a *rājaniti* work. Perhaps it will be tracked own one day.

dvādaśābdam vā tad-arddhaṃ vā tad-arddakam
prakuryyād dvādaśāhaṃ vā sankalpyaitacchiracchirovratam

This proves that the pāśupata vow can be accomplished in various periods (not involving perpetual celibacy),

'for twelve years or for a year, for half a year, or a quarter of it, he should perform the "Head (-shaving) Vow—or even with intention (devotion) lor twelve days.'

The text is attributed to the *Saura-saṃhitā*, which is a part of the *Skanda-purāṇa*, and not available to me for verification. These two last texts show that the vows can be performed by householders, and for short periods: our inscription goes on to assert that Upamanyu, Dadhici, Agastya, Rama and Kṛṣṇa were householders and performed the Pāśupata vow. The argument next moves to the positive requirement of performance of *karma*.

ṛṇam asmin sannayaty amṛtatvaṃ ca gacchati ।
pitā putralya jātasya paśyec cei jivato mukham ॥
nāputrasya loko 'sti. ..

'When a father sees the face of a living son he casts his debt onto him and acquires immortality. There is no world lor the sonless man. ..'

This is stated to have come, along with the passage which immediately follows, from a *Ṛg-brāhmaṇa*, which is true enough since it is *Ait. Brā.* XXXIII. 1, quoted by Viṣṇu XV. 45 and Vasiṣṭha XVII. 1, and thus very well-known.

yajuṣā (?) jāyamāno vai brāhmaṇa-sthitau ।
ṛṇāni triṇyapākṛtya mano mokṣe niveśayet ॥

The first word appears to be corrupt.

'Even by being born In the status of a Brahmin he should fix his mind an release having paid the three debts. '

This is a versified paraphrase of *Tai. Saṃ* V 1.3.10.5, which is in fact quoted in the original in the *Parāśara-Mādhavīya*. It is a commonplace that the Brahmin is born with

three debts, which three he cannot work off unless he marries and begets a legitimate son. True enough the view that an unmarried man can work off the debts to his parents by performing the *agnihotra* is set out (as an example of the consolatory provisions of the *śāstra)* in *Ait. Brā.* VII.2.8-9 (9-10). But that is rather a different matter. The theory of the three debts, once accepted, is fatal to perpetual celibacy on the part of those qualified for marriage. Our inscription urges that the three debts must be paid, from which it follows that sacrifices must bc performed, whence it follows, in turn, that marriage is requisite. ..

jāyām auāpya daśame 'hany agnin ādadhita ।
jātaputro 'gnin ādadhita ।
uparāge kurukṣetre meṣa-kṛṣṇājinādikaṃ
caṇḍālāt pratigṛhyāpi yajed avaśyakair makhaiḥ ।

The first of these ("Having acquired a wife he should lay the fires on the tenth day") I have been unable to locate, though the inscription would attribute it to the Veda and *smṛti.* The second ("When a son is born he should lay the fires") is a commonplace Vedic citation which no one can locate In a Vedic passage now extant. The third too I cannot trace: "In the dark, at Kuruketra, even if one has to accept a sheep or black antelope's skin, etc., from a *Caṇḍāla*, he should sacrifice with the essential sacrifices." The word *makha* interests us momentarily since the little dynasty of Śaivite gurus at Jambukesvaram in the seventeenth century were called *makhi* (e.g., Śadasiva-makhi), indicating that a Śaivite pontiff at this very place was a married man performing Vedic sacrifices. The texts cited tend to show that sacrifices are obligatory and that marriage is needed in order to perform them. That a man is completed by his wife, in all respects and with special references to sacrifices, Is a commonplace of the Vedic tradition *(Sal.* Bra. V.2.1, 10).

The inscription goes on to assert that he who fails to perform the necessary sacrifices is a sinner, the implication being that he is fit to be oulcasted: and this would apply also to Brahmins who were members of the Pāśupata sect, as they did not cease to be Brahmins by belonging to It.

yasya Vedaś ca vedi ca vicchidyete tripuruṣam ।
sa vai durbrāhmaṇo nāma sarva-karma-bahiṣkṛta ॥

He whose Veda and sacriticlal altar are cut off for three generations is called an Evil Brahmin, cast out from all rituals.'

I do not doubt but that this can be identified and verified, because the pandits of the Adyar Library report it as located in their manuscript copy of the *Jābāla-smṛti*, a work of comparative rarity. They sought for it because it is quoted as from Jābāla at p. 626 of the (Adyar) edition of the commentary of Nanda-paṇḍita (who lived not so very long after our inscription) on the *Viṣṇsmṛti* (LIV. 13). It is interesting to see such rare and

marginal *smṛti* works relied upon for such an important purpose. But we must admit that the principle enunciated is an obvious one. The next work to be cited defeats me.

śruti-smṛti-mamaivājñā yas tām ullanghya varttate ।
ājñā-cchedi mama drohi mat-buddhi-pratiloma-kṛt ।।

"He who lives in defiance of the Veda, *smṛti* and my order is disobedient, a traitor to me, acting contrary to my wisdom."

No doubt this comes from a Śaivite purāṇic work. Its tendency is plainly to show that Śalvism is fully consistent with Veda and with *smṛti*, and that devotees of Siva must confonn to *varṇāśrama-dharma*, which is what the authors of our inscription must have wanted. This Is the last of the authorities quoted. There follows the effect of the allegations, and the whole is wound up with an elegant Sanskrit verse to which we shall come immediately, a very free Tamil paraphrase of it, a curse in Tamil only, to the effect that one who breaks this "order" will be guilty of killing a cow in milk and his two parents on the banks of the Ganges.

Then comes an Interesting list of persons who are to be bound by the decision, including Brahmins to bearing the title *paṇdita*, Nambi, *bhaṭṭa*, and the accountants or treasurers of the temple and of the assembly, and then the whole is wound up with a Sanskrit verse in 'praise of the guru, Candraśekhara, himself.

Here is the longer verse referred to above,

After a *śloka* we have two couplets in the Sārdūlavikriḍita metre and one in Upendravajrā,

evaṃ Siva-preraṇayā dattaṃ Caṇdena śāsanam ।
tad idaṃ śāsanam pālyam sarvadā sarava-mānvariḥ ।।
Caṇḍeśasya śaśānka-śekhara-camū-dhaureyatām eyuṣo ।
Lakṣmikānta-Viriñca-mukhya-viduṣo mauli-sthitājñājuṣaḥ ।।
ājñāṃ prājñatamāṃ nikāmam avatu kṣoṇi-dhendras sadā ।
treyas santati-kārinim abhimatām Candrārddha-cūḍā maṇeḥ ।।
avaśyam ājñā paripālaniyā Sivasya devair upalālaniyā ।
vilikhyatāṃ Dakṣa-purassarāṇāṃ pramādyatāṃ paśyata pūr-vipākam ।।

"Thus a decree was given at the command al Śiva by Caṇḍa that very decree must always be protected by all men, May the Ātreya king ever fully protect the order, most wise, productive of issue, approved by him whose crest-jewel is the crescent moon, made by Caṇḍeśa, who has become the commander-in-chiel of the army of him whose crest is topped by the moon, who is a leading devotee if Viṣṇu and Brahmā," who delights In the order which he has placed on his head. Necessarily the order of Siva must be

observed, delightfully regarded by the *devas*. Let it be inscribed! Consider the disaster that befell the city of the incautious Dakṣa and those like him"

The final, neat lines are these:

"ubhayor iyam eva bhidā vasinor iha jagati Candraśekharayoḥ ।
makuṭa-gata-rāja-pādaḥ kaścana pāda-gata-rāja-makuṭo nyaḥ ॥

"Between the two Candraśekharas who are alike lords on this earth there is only this difference: one has a King (i.e. Soma, the moon) on his diadem, the other has a king's crown at his feet."

The Mīmāṃsā school

Direct contributions to the analysis of the concept of Property did not occur at the hands of Mimāṃsakas until after the time of Raghunātha Siromaṇi and the challenge thrown out by the New Logic. But , as we have already seen, distinct viewpoints on many of the incidental topics of Property had grown up amongst the commentatorial literature based upon Jaimini's *Mimāṃsā-sūtra*. The whole science of sacrifice and the interpretation of Vedic texts bearing upon that voluminous subject was bound to afford opportunity to consider the rights to acquire, use, and dispose of property. The great contribution of the Mimāṃsā (IV B ii) was the distinction between prohibition and nullity). The sinfulness of taking, using, or sacrificing with the property of another was, of course, by no means diminished by the discoveries there referred to. See, for example, Manusmṛti IV, 201-2; and the story of the sale of Nṛga in Bhāgavatam X, 64 quoted by Raghunandana, cited by Colebrooke in a long note on Dāyabhāga, XIII, 12, relating to the question of he difference between mistaken appropriation and theft. In the study of the very concept of Property they were forced, for very similar reasons, to make another significant contribution.

We must pay attention to the Mimāṃsā because, between that school and the Nyāya, it was the former which had the greatest influence upon *dharmaśāstris*, Colebrooke once said that the weight of the impressions created upon the minds of jurists bythe two schools differed according to localities), and indeed the influence of the logicians in Bengal was great — but it was only a local influence, and the intimate connexion between the rules of intepretation taught for centuries by the Mimāṃsakās and the fabric of established *Dharmaśāstra* scholarship made it certain that in the event of a direct conflict between Interpretation and Logic, the former would win.

It the *sva* which must be the object of tall dedications and oblations and sacrifices) took its *svatva* from circumstances outside the knowledge of the sacrificer *(yajamāna)*, the question arose, who shold determine whether it was lawfully his or not? Since the Mimāṃsā had already determined that *svatva* was not to be tested with exclusive reference to śāstric texts, it followed that popular recognition alone supplied the test. The burden must rest,

therefore, with the *yajamāna* and such lay advisers as he might consult. The suggestion that *svatva* was an entity in its own right, resident or inhering in objects, was in practice hostile to this conclusion. The Mīmāṃsakas therefore preferred to consider it a samskara, or mental impression (Colebrooke translates, "faculty"), of course on the part of the *yajamāna*, and its opposite on the part of those with whom he had entered into transactions. If *svatva* was a part of the state of mind of the *svāmī* (whose reasons for believing he was *svāmi* could be checked with reference to the appropriate authorities), what he believed was his *sua*, was *sua* for the purposes of acquisition by his priests and others which whom he entered into transactions during sacrifices and at other and comparable times. The shift in the centre of enquiry, from the object itself and the history of its passage into the hand of the *yajamāna* to the mental state of the *yajamāna*, was greatly conducive to the convenience of all parties concerned with *dharma*, or more strictly *apūrva*, "religious merit".

The definition of Property as a *saṃskāra* was convenient from additional points of view. Quite apart from the inconveniences alleged to exist in the "category" theory, to which we shall come, the Mimāṃsakas had difficulty in seeing how a cognition which had always been expressed as *mamedam iti* could produce anything other than an impression upon the appropriate aspect of the personality. Not all the meanings associated with the word *saṃskāra* are relevant here): we are not conerned wwith theeffects of Fate or *karma* upon the soul before birth, nor with the *dharmaśāstri's* special *saṃskāras*, or birth-ceremony, initiation, marriage, and the like, which, in a fashion reminiscent of sacraments, produce a supersensory change in the personality. To the Mimāṃsaka the *saṃskāra* in question here was merely an example of a use of a term which appears much in Vaiśeṣika philosophy, "a mental impression or recollection resulting from a prior experience"; it is in fact the last of the *guṇas* (or "qualities") or the Nyāya-Vaiśeṣika system, beign a quality which the Self is inherently apt to acquire. Each congnition is capable of producing an instantaneous *saṃskāra*, which may be revived or aroused by the operation of memory, resulting in mental non-cognitive perception. The *saṃskāras* represent the root impressions by which any habit of life that man has lived through or any pleasure in which he took delight for some time, or any passions which were engrossing to him, tend to be revived, for though these might not now be experienced, yet the fact that they were experienced before has so moulded and given shape to the *citta*" (conscious mind) "that the *citta* will try to reproduce them by its own nature even without any such effort on our part." If memory fails the *saṃskāra* may not produce the perception, and if Property is a *saṃskāra* it follows that awareness of its is, to put it mildly, precarious and, from a purely practical point of view, speculative. This is only one, as we shall see, of the difficulties inherent in the *saṃskāra* theory of Property.

It is not merely a coincidence of vocabulary that *saṃskāra* is regularly used in Mīmāṃsā technique for the preparatory act or experience (whence the *Dharmaśāstra* use of the word) intended as a preliminary to a sacrifice). It can hardly be doubted but that the Mimāṃsakas, in choosing to identity *svatva* as a quality of the Self, and a particular *saṃskāra* due to a congnition related to a particular contact between a thing or things and

the senses, were deliberately meeting the requirement that in order to be a *yajamāna* one must be "qualified" in point of Ownership of the necessary property. In their eyes, unless the *yajamāna's* Self were qualified with the several Properties in respect of the several objects necessitated in the sacrifice, etc., the latter would be a nullity, and this seems to have been so despite the independent determination that the *acquisition* of Property was not itself a subsidiary to the principal rite itself).

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This Dictionary has been compiled by a leading Hindu spiritual teacher and eminent vedic scholar *Swami Parmeshwaranand* of Haridwar (U.P.). He has written several books on Hindu religion and translated many important religious scriptures into English. He has also conducted several seminars, and work shops where many reputed theologists from all over the world took participation.

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